COLORADO SUPREME COURT
2 East 14th Avenue
Denver CO 80203

Original Proceeding Pursuant to
1-40-107 (2) C.R.S. (2021)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2021-2022 #6 ("Petitions")

Supreme Court Case No. 2021SA10

Petitioners John Ebel and
Donald Creager
co-proponents

v.

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

OPENING BRIEF BY PETITIONERS

We can't afford a lawyer. Please accept this pleading based on a simplified format using a brief filed by the Attorney General. --co-proponents Ebel and Creager

We ask the court to rule promptly on the Opening Briefs and waive the reply briefs. We have been stalled by the state for over three years; that is enough.

CERTIFICATE OF COMPLIANCE

I certify this petition for review is under 1,700 words.

John Ebel

John Ebel

SUMMARY OF ARGUMENT

With slight changes, the Petition Rights Amendment (PRA) text has been filed many times over 24 years. PRA was approved for the ballot in 1996 and 2006. We are the latest pair of weary petitioners. Petitioners John Ebel and Donald Creager petition this court to review and reverse the rehearing decision on January 6, 2021 that denied a ballot title for initiative 2021-2022 #6 ("Petitions") on the claim that it is not a single subject. Two virtually identical drafts (2019-2020 #245 and #299) were approved by this court on appeal in May 2020, but the process was delayed so long that we lacked time to make the new *de facto* goal of 190,000 entries (triple the 62,437 valid entries demanded in 2006) filed by an August 2020 deadline for (illegal) verification done by the state.

Required valid entries are 124,632. Article V section 1 (6) says entries with affidavits are presumed valid until proven invalid by a private opponent (not the state). A statute also prevented our ability to enjoy our constitutional rights to petition under the First Amendment of the U. S. Constitution and section 24 of Article II and Article V section 1 of the state constitution. No germ can override our constitutional rights.

ARGUMENT

The title board makes three novel claims of multiple subjects. First, it says a standard inclusion in the text ("Enforcement" section 4) of a typical protection is a second subject. That last sentence on its own cannot be a single subject; it relates only to content of the sentences before it. "Enforcement of what?" One board member said it may refer to any standing to sue anywhere in any case; that is inconsistent with "enforcement" of PRA. One member said on rehearing it was open-ended even though we said it referred only to PRA. We proposed at the original hearing to either delete the sentence (which the board conceded we can do) or to add clarifying words "in this statute." Our offer was denied. This court has the power to add the three words to clarify the text. The innocuous sentence is related to the other sentences; that is the essence of being a single subject. In Bedford. v. Sinclair (1943) and a later revisit, your predecessors said contemporary evident (publicized, pre-election) interpretation by petition proponents shall be accorded substantial weight by this court in enforcing allegedly unclear words. Well, here it is.

State staff gave our text a title of "Petitions." They recognized it dealt with Colorado petitions only, not litigation anywhere on tort, labor law, or criminal cases. The title board seized on this last sentence to conjure up yet another delay tactic by its wild speculation. They would not accept our offer at the hearing to drop the sentence or add the obvious three words at the end. Note a staff draft title we never even discussed did not even list the last sentence as a major feature, much less an unrelated second subject.

The second claim of a second subject concerns the drafting format. The board said it had never seen a petition drafted that way. Mr. Galender from Legislative Legal Services said it was not the way the general assembly drafted legislation. Stylistic formats are not second subjects. The review and comment process has staff questions framed in the nature of "suggestions," because the constitution expressly prohibits the state from dictating a petition text. See Article V, section 1 (5), last sentence. The only test is whether a subject is clear—not conventional, not conforming, not traditional, not even constitutional, but only clear. This title board illegally seeks to expand its control over the petition process. Our text is crystal clear. Specified parts of Article V section 1 that are "repealed" are stated with clarity and brevity. The next sentence is falsely called an "amendment," when it is simply a footnote-type directive that one sentence "shall not apply to petitions." It adds or deletes no words to the constitution, so it is not an "amendment." No "amending clause" is proper. No mandated change in our text is legal.

Mr. Galender's unfamiliarity with those two sentences does not make them illegal. He also did not cite any constitutional language that forbids such phrasing, or forbids a petition that has both statutory and constitutional language. Failure to follow drafting practices of the general assembly is not a crime, nor a second subject. Staff questions at review and comment hearings make "technical suggestions," like replacing "120,000" with "one hundred twenty thousand" and other details. If this court insists, it can reword those first two sentences of section 4 to "correct" the imagined violation, without delaying our petition process. Adding the stiff, unneeded, and legalistic phrasing of the

general assembly is alienating and pointless. It violates our First Amendment rights.

Mr. Galender said he is "not comfortable with the form;" that has no legal weight. A public servant is obligated to guard our constitutional rights, not his subjective whims. The role of a constitution is not to put bureaucrats at ease, but to protect our freedom.

Proponents pointed out the title board in 2020 set 12 petition titles that had both a lengthy statutory income tax increase and a repeal of the flat rate income tax now in the constitution. The title board violated our right to equal protection of the law by treating our petition differently. The only distinction the board can offer is that PRA reduces the board's power. The title board still set a title for 2019-2020 #245 and #299, which also limited board power. The board is confused. Our **Exhibit 1** (seven numbered paragraphs in two pages) for the rehearing did not persuade them. We hope it will assist this court in doing justice to our petition.

The third, most cryptic claim by a board member cited the last sentence of Article X, section 6. PRA has nothing to do with vehicles or taxes; that last sentence of section 6 has nothing to do with standing. It was an overly broad attempt to prevent future laws on property taxation. It is a legal dictate from the grave (1876) that has itself been changed multiple times (1936, by petition; 1966; and 1975). (It was obviously a great success.)

CONCLUSION

We request this court reverse the rehearing decision and set a title promptly that complies with C.R.S. 1-40-106 (3), which directs "...Ballot titles shall be brief..." Petitioners offered a ballot title to the Board at the rehearing that in 60 words covers all main features of #6:

> A change to the Colorado Revised Statutes concerning petitions, allowing petitioning of all Colorado governments; changing procedures; informing voters of petitions; printing pro and con websites; requiring petition titles up to 60 words; limiting bills the general assembly may exempt from possible referendum; allowing laws enacted by petition to be changed only by another petition; and repealing all conflicting statutes.

If this court wishes to continue its tradition of deference to the title board, it can adapt as a draft the ballot title initially set by the title board for 2019-2020 #245 on February 19, 2020 at 4:33 p.m. At 59 words, it was as follows:

Shall there be an amendment to the (Colorado Revised Statutes and) constitution concerning petitions, and, in connection therewith, allowing petitioning of all Colorado governments; changing petition requirements and procedures; requiring brief, plain English petition titles; limiting the amount of state legislation that is petition-exempt; allowing laws enacted by petition to be changed only by another petition; exempting petitions from municipal home-rule provisions; and repealing all conflicting laws?

(62 words, adding "Revised Statutes and...)

The February 19 title set by the board was brief, but imprecise. First, it continued the robotic repetition of "and, in connection therewith," four wasted words that add no information. Second, it redundantly says "requirements and procedures," when the text says in bold print "**procedures**." Third, it adds "petition" to every clause, even though the title begins by saying "concerning petitions." Fourth, the pointless addition of "the

amount of" leads the reader to imagine legislation by the ton, quart, or acre. Fifth, it adds a clause about "municipal home-rule provisions" before a repetitive "repealing all conflicting laws." The word "municipal" is not present. Only the February 19 board title met a statutory requirement of brevity. It should have been kept and refined, not padded.

The title of #6 after rehearing was 150% longer than the first for #245—155 words v. 59. Lengthy references in the second title of #245 and later titles were not to new ideas, but repeal of existing language never experienced by voters. That is of interest only to scholars writing monographs on a history of Colorado petitioning. As they were not main features in the February 19 version set by the board, they should not be thrown in.

This state delay is a large part of the contents of #6 that we are trying to reform. Please order the title board and secretary of state to obey the true law: 1) Set brief ballot titles, like two samples above; 2) Reject the illegal statute telling a legislature to change a constitutional three-month-before-election filing deadline to add three more weeks (a c. 25% reduction in the filing deadline; and 3) apply unconstitutional statutes that let the state disqualify entries contrary to Article V section 1 (6), a legal presumption entries attached to verified petitions (by affidavit) are genuine and true and made by registered electors (rather than the current illegal statutory system requiring state challenge us).

Last year, this court ruled 4-to-3 the period for legislating no longer had to be 120 consecutive days, but could be extended by a virus exception. The same Article V that empowers the general assembly gave in its first sentence an equal power to citizens to

legislate. We ask this court to rule time flexibility also applies to petitions. Petitioners should set when the collection process begins and ends, subject only to the three-month rule in Article V 1 (2), without the amended and added three-week restriction by statute.

We also ask the court to declare unconstitutional the six-month limit on getting petitions filled. No petitioning time limit exists in Article V, Article XXI, or elsewhere in the constitution. No statute can impair a constitutional right, whether guaranteed by the First Amendment of the U. S. Constitution, Article V of the state constitution, Article II of the state Bill of Rights, or all of the above, as is the case here.

We also object to the statutory blackouts on when a petition may begin. There is no lawful reason to forbid a petition starting in May, even if its entries are due in August. There is no lawful limit on starting in the odd-year, before the general election year.

Please grant our stated requests for relief and award us our $225 filing costs as successful parties ($75 each on #245, #299, and this #6).

Respectfully submitted on January 29, 2021

John Ebel

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CERTIFICATE OF EMAILING

I certify I emailed this Opening Brief on January 29, 2021 to:

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Attorney for Title Board

/s/ John Ebel
John Ebel

2021-2022 #6 PRA Supreme Court Open Brief

Final Audit Report 2021-01-28

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Re-Hearing on 2021-2022 #6 “Petitions”--SINGLE SUBJECT

1. “Standing” is not a second subject, but a standard part of legislation, like effective date, severability, etc. To call it a separate petition is nonsense. Enforcement is an intrinsic part of texts; it is the last sentence of PRA (“Petition Rights.”) Mr. Gelender opined it may grant unlimited standing for all litigation in the world. That’s not what the text says. To help the board, we offered to clarify our intent by adding three end words “in this statute.” Minor edits are allowed at title setting. Board panic denying our right to petition is wrong. Proponents’ public views get great deference and weight in post-election court interpretations; the supreme court has so ruled since 1943.

2. You objected to a statute that repeals constitutional wording, yet allowed in 2020 a DOZEN versions of a statutory income tax rate increase text that repealed the flat rate income tax in TABOR’s constitutional wording. You help income tax revenue increases for the state (your employer) and still oppose PRA, which curbs this board’s title monopoly. That is illegal, wrong, unfair, unethical, a clear conflict of interest, and a denial of equal protection of the law (14th Amendment).

3. A taped news report filed here quoted Mr. Gelender verbatim: “You simply cannot amend the Colorado constitution by enacting a statute.” The board did so in 12 income tax increase petitions, to the same effect and purpose. Our text would have the same effect. Would the board allow two new words at the end of section 4, preceding what are now the first two sentences of section 4?* Do you still insist the second sentence is also an “amendment,” even though it does not alter one word in Article X section 20 (3)(b)(v)? If we submit to both board demands, can we have our right to petition back?

*EXAMPLE: COLORADO CONSTITUTION. (Insert first sentence of section 4.) (Insert second sentence of section 4.)

4. The eyewitness reported, "*The board signaled to the proponents that their single subject concerns would be allayed by the deletion of the sentences repealing parts of the constitution and the sentence giving anyone standing to sue….They did not, however, provide a definitive answer about whether such changes were minor enough to allow a direct reconsideration at the board's next meeting*." State precedent is that deleting words does not need a new review and comment hearing. Proponents have deleted hundreds of words over many years and object to further suppression of our text.

5. The board's last ruling shows defiance and disdain for the #299 supreme court ruling. Both petitions approve repeal of the same parts of Article V section 1 (2)-(10), with the same three exceptions listed in #299 and here. The "shall not apply" words referring to the last sentence of (3)(b)(v) were also court-approved in #299.

6. This board has an obvious conflict of interest because PRA removes this board's monopoly control over all state petitions. The proper view is that the right to petition prevails over an unelected board's power to kill citizen petitions. You must defer to our state and federal constitutional rights, also protected by 42 USC 1983 statutory enforcement of civil rights. Board misconduct here would further show to voters the urgent need to pass PRA.

7. We also want an official state position on when our approved draft petition may begin. The virus led to state petitioning delay for petition #115 to factor in the (illegal) state lock down, which affects access to signers. Will the state allow a collection period longer than six months? May we postpone the start of the six-month period? Will the cure period be delayed or longer? How do we handle physical delivery to the secretary of state of filled entries?

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LENGTH OF BALLOT TITLE (60 words should be the target—"be brief"). See attached arguments and heavy editing of loquacious staff draft).