COLORADO SUPREME COURT
2 East 14 th Avenue
Denver CO 80203

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

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In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2021-2022 #23 ("Petitions")

Supreme Court Case No. 2021 SA 139

Petitioners John Ebel and
Donald Creager
co-proponents

v.

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

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# OPENING BRIEF BY PETITIONERS

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We can't afford a lawyer. Please accept this simplified pleading based on a brief filed by the Attorney General.

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

--co-proponents Ebel and Creager

## CERTIFICATE OF COMPLIANCE

I certify this petition for review is 1807 words.

_____
John Ebel

## SUMMARY OF ARGUMENT

With slight changes, the Petition Rights Amendment (PRA) text has been filed many times over 25 years. PRA was approved for the ballot in 1996 and 2006. We are the latest pair of weary petitioners. 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 gross entries (triple the 62,437 valid entries demanded in 2006) filed by an August 2020 deadline for their (illegal) verification done by the state. Required valid entries are 124,632.

We propose both a statutory change to the petition process and to repeal constitutional petition wording. Board member Gelender said he had never seen that format, though the board had approved a dozen such combinations in 2020 that repealed a constitutional income flat tax rate and simultaneously proposed graduated statutory income tax rates. There is no legal ban on doing both in the same petition. The constitution does not require citizens must use strike out type to repeat what is being repealed. See Article V section 1 (5). No law forbids repealing identified constitutional procedures conflicting with new statutory words. No law mandates a legal format for a statute or constitutional repeal.

If this court has a secret reason for rejecting our wording or format, we must know what it is to address it. At least, we can agree a "repeal" does not add words.

Article V section 1 (6) says entries with affidavits are presumed valid until proven invalid (by a private opponent, not the state). The state has also blocked 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 section 1 of Article V of the state constitution. No manic panic over a virus overrides those rights.

## ARGUMENT

The title board's novel claim invented a legal obstacle of falsely describing the plain words of the text and asserting invisible words it can't identify.

State staff gave our text a title of "Petitions." We agree it deals with petitions only. All tired old single subject arguments have been laid to rest, we hope.

A board member said he had never seen a petition drafted this way. Mr. Gelender from Legislative Legal Services said this was not the way the general assembly drafted laws. Stylistic formats are not second subjects. The review and comment process lets staff question in the nature of "suggestions" only, 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

political control over citizen rights. Our text is crystal clear. Specific parts of Article V section 1 "repealed" are stated with clarity and brevity. One footnote-type directive says one sentence in Article X "shall not apply to petitions" to avoid textual conflict. It "adds no words" to the constitution. No board-mandated change in our text is legal.

Mr. Gelender 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 offer "technical suggestions," like replacing "120,000" with "one hundred twenty thousand" and other details. If this court wants to reword the two repealer sentences after "Colorado Constitution" at the end of a statutory text to correct the imagined violation, we will submit to court co-authorship to stop delay to our petition process in this legal limbo. Adding stiff, unneeded, and legalistic phrases of the legislature is alienating and pointless. It also violates the First Amendment.

Mr. Gelender felt he is "not comfortable with the form." A public servant's duty is to guard our constitutional rights, not his subjective senses. 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 (#251-256 and #267-272) that had both lengthy statutory income tax increases and repeal of the flat rate income tax now in the constitution. The board did NOT impose a 55% finding on them; it did not FALSELY say their repealers ADDED WORDS to the constitution. The board

thus violated our right to equal protection of the law by treating our petition differently. The only difference is that PRA reduces the board's political power, and the dozen adds billions to state revenue. The board also set title for 2019-2020 #245 and #299. That hearing **Exhibit 1** (seven paragraphs in two pages) did not persuade them permanently to be fair. It just changed their tactics. We hope it helps this court do justice to our petition now.

The April 21, 2021 board affirmed its false finding that our petition "requires the addition of language" to the constitution. When asked to point out those words, it could not. Amendment 71 said ADDING words to the constitution required 55% voter approval, but repealing words explicitly did not. PRA ONLY REPEALS constitutional words; IT ADDS NONE. The supermajority vote rule does NOT apply to our text. The board acted lawlessly in creating a standard that expressly does not apply. We are simply following the directive and stated purpose of Amendment 71--to encourage statutes and repeal of constitutional wording--to change constitutional procedures into statutory ones.

The title the board approved on April 7, 2021 begins with what is repealed—what PRA does NOT enact, rather than what PRA does. It is illegal for the title board to tell voters falsely what a petition does, to trigger a higher vote hurdle. It is illegal to say a blank space or silence "adds words" to the constitution. Imagine a blank sheet of paper stapled to a statutory petition. What words did it add to this "secret constitution?" This court should not give the board yet another chance to abuse and delay us. Please set the ballot title yourself. The board has proven itself deeply hostile to our petition.

## CONCLUSION

We humbly request this court reverse the board's finding, and set a proper title promptly to follow C.R.S. 1-40-106 (3), which directs "...Ballot titles shall be brief..."

Petitioners have given the board a 59-word title to covers all main features:

> 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; limiting petition titles 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 laws.

If this court nevertheless wishes to defer to the errant title board, it can adapt as its draft the title initially set by the title board for 2019-2020 #245 on February 19, 2020. It is edited by proponents as follows:

*An amendment to the Colorado Revised Statutes concerning petitions, to allow petitioning of all Colorado governments; change procedures; require brief, plain English titles; limit state laws that are petition-exempt; allow laws enacted by petition to be changed only by another petition; and repeal all conflicting laws.*

The title can and should be short. The edited version above is 46 words.

The February 19, 2020 title set by the board was brief, but imprecise. First, it kept the robotic habit of "and, in connection therewith," four wasted words that add nothing. 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 starts by saying "concerning petitions." Fourth, the pointless addition of "the amount of" leads readers to imagine legislation by the ton, quart, word, or acre. Fifth, it adds a clause on "municipal home-rule provisions" before a repetitive "repealing all conflicting laws." The word "municipal" is not even present. Only the February 19 board title met a

statutory brevity requirement. If kept, it should be refined, not padded.

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

This state delay is a large part of the process we are trying to reform here. Please order the title board and secretary of state to obey the true law: 1) Set brief ballot titles, like the two samples above; 2) Invalidate the illegal statute telling the state to change the constitutional three-month-before-election filing deadline to delay three MORE weeks; and 3) Invalidate unconstitutional statutes letting the state disqualify entries in violation of Article V section 1 (6), the legal presumption that entries attached to verified petitions by affidavit are genuine and true and made by registered electors (rather than the current illegal system requiring automatic challenges by the state).

Last year, this court ruled 4-to-3 the constitutional 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 gives 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 decide when the collection process begins, and ends subject only to the three-month rule in Article V 1 (2), without the added, palpably illegal three-week

statutory restriction (void on its face) the secretary of state knows now not to enforce.

We also ask this court to declare unconstitutional the six-month limit on getting petitions signed. There is no compelling governmental interest. No petitioning time limit exists in Article V, Article XXI (adopted same era), or elsewhere in the constitution. No statute can impair a constitutional right, whether guaranteed by the First Amendment of the U. S. Constitution, Article II and V of the state constitution, or all of the above.

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 $375 filing fees as successful parties ($75 each case) on 2019-2020 #245 and #299, and 2021-22 #10, #11, and this #23.

Respectfully submitted on May 11, 2021

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CERTIFICATE OF EMAILING

I certify I emailed this Opening Brief on May 11, 2021 to:

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Attorney for Title Board

/s/_____
John Ebel