

COLORADO SUPREME COURT

2 East 14th Avenue

Denver, CO 80203

Original Proceeding Pursuant to

§ 1-40-107(2), C.R.S. (2020)

Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative
2021-2022 #27

Petitioner: Carol Hedges and Scott
Wasserman,

v.

Respondents: Suzanne Taheri and
Michael Fields,

and

Title Board: Theresa Conley, LeeAnn
Morrill, and Jason Gelender.

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Case No. 2021SA151

THE TITLE BOARD'S OPENING BRIEF

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 2,022 words.

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

The brief contains, under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

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/ Emily Buckley

EMILY BUCKLEY, #43002

Assistant Attorney General

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- (1) Whether the Title Board correctly determined that Proposed Initiative 2021-2022 #27 contains a single subject.
- (2) Whether the title set by the Board is misleading and fails to advise the voters of the central purpose of the measure.

STATEMENT OF THE CASE

Proponents Suzanne Taheri and Michael Fields seek to circulate #27 to obtain the requisite number of signatures to place a measure on the ballot to amend §§ 39-1-104, 39-1-104.2, and 39-3-207 in Colorado's revised statutes. The proposed initiative seeks to reduce the residential and non-residential property tax assessment rates, while allowing the state to retain and spend 25 million annually for five years to offset lost revenue resulting from the homestead exemptions for qualifying seniors and disabled veterans. Record filed May 7, 2021 ("Record") at 2.

A majority of the Board concluded that the measure contained a single subject at its April 21, 2021 meeting and the Board proceeded to set title. *Id.* at 3. Petitioners filed a timely motion for rehearing, asserting #27 contained multiple subjects and that the title is

misleading. *Id.* at 4–6. On April 30, 2021, the Board denied the motion for rehearing. *Id.* at 12.

SUMMARY OF ARGUMENT

The Board’s actions in setting #27 should be affirmed. The single subject of #27 is reducing the residential and non-residential property tax assessment rates, while allowing the state to retain and spend 25 million annually for five years to offset lost revenue resulting from the homestead exemptions for qualifying seniors and disabled veterans. Record filed May 7, 2021 (“Record”) at 2. The provisions of the measure that Petitioner challenges on single subject grounds are either necessarily and properly connected to that subject or constitute impermissible speculation about the possible effects of the measure. Petitioners also challenge the clear titles in the petition for review; the title set by the Board is not misleading.

ARGUMENT

I. Standards governing titles set by the Board.

The Court does not demand that the Board draft the best possible title. *In re Title, Ballot Title and Submission Clause for 2009-10 #45*

(“*In re #45*”), 234 P.3d 642, 645, 648 (Colo. 2010). The Court grants great deference to the Board in the exercise of its drafting authority. *Id.* The Court will read the title as a whole to determine whether the title properly reflects the intent of the initiative. *Id.* at 649 n.3; *In re Proposed Initiative on Trespass-Streams with Flowing Water*, 910 P.2d 21, 26 (Colo. 1996). The Court will reverse the Board’s decision only if the title is insufficient, unfair, or misleading. *In re #45*, 234 P.3d at 648.

The Court will “employ all legitimate presumptions in favor of the propriety of the Board’s actions.” *In re Title, Ballot Title and Submission Clause for 2009-10 #91*, 235 P.3d 1071, 1076 (Colo. 2010). Only in a clear case should the Court reverse a decision of the Title Board. *In re Title, Ballot Title and Submission Clause Pertaining to Casino Gambling Initiative*, 649 P.2d 303, 306 (Colo. 1982).

Section 1-40-106(3)(b), C.R.S., establishes the standards for setting titles, requiring they be fair, clear, accurate, and complete. *See In re Title, Ballot Title, and Submission Clause for 2007-08 #62*, 184 P.3d 52, 58 (Colo. 2008). The statute provides:

In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a “yes/for” or “no/against” vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly express the true intent and meaning thereof, together with the ballot title and submission clause, shall be completed...within two weeks after the first meeting of the title board. ...Ballot titles shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and, shall be in the form of a question which may be answered “yes/for” (to vote in favor of the proposed law or constitutional amendment) or “no/against” (to vote against the proposed law or constitutional amendment) and which shall unambiguously state the principle of the provision sought to be added, amended, or repealed.

§ 1-40-106(3)(b), C.R.S.

II. The proposed initiative contains a single subject.

A. Standard of review and preservation.

When this Court reviews “the Title Board’s single subject decision, [it] employ[s] all legitimate presumptions in favor of the propriety of the Title Board’s actions. [It] will only overturn the Title Board’s finding that an initiative contains a single subject in a clear case.” *In re Title*,

Ballot Title, & Submission Clause for 2011-2012 #45, 2012 CO 26, ¶ 8 (quotation omitted). The Title Board agrees Petitioners preserved the single subject issue by raising it in the motion for rehearing.

B. The single subject requirement is met.

The single subject of #27 is reducing the residential and non-residential property tax assessment rates, while allowing the state to retain and spend 25 million annually for five years to offset lost revenue resulting from the homestead exemptions for qualifying seniors and disabled veterans.

Parsing the language of #27, Petitioners assert the initiative contains numerous subjects. *Petition for Review*, p 4. But “[m]ultiple ideas might well be parsed from even the simplest proposal by applying ever more exacting levels of analytic abstraction until an initiative measure has been broken into pieces. Such analysis, however, is neither required by the single-subject requirement nor compatible with the right to propose initiatives guaranteed by Colorado’s constitution.”

Matter of Title, Ballot Title and Submission Clause, Summary Clause for 1997-1998 No. 74, 962 P.2d 927, 929 (Colo. 1998). But of Petitioners’

proposed subjects overlap, and a review of the initiative demonstrates that it contains a single unifying subject.

Petitioners argue that the single subject test is not met in part because #27's reductions in tax assessment rates will also impact state revenue and funding. *Petition for Review*, p 4. Petitioners' argument goes to the merits of the measure and its possible effects, but does not weigh in favor of rejecting the measure on single-subject grounds. "In determining whether a proposed initiative comports with the single subject requirement, [the Court does] not address the merits of a proposed initiative, nor [does the Court] . . . predict its application if adopted by the electorate." *In re Title, Ballot Title, & Submission Clause for 2007-2008 #62*, 184 P.3d 52, 59 (Colo. 2008) (quotations omitted). Because Petitioners' arguments concern the potential effects and consequences of the measure, not the measure itself, they have not shown a violation of the single subject rule. *See Record*, p 5; *see also Petition for Review*, p 4. "[T]he effects this measure could have on Colorado law if adopted by voters are irrelevant to [a] review of whether the proposed initiative and its Titles contain a single subject." *In re*

Title, Ballot Title & Submission Clause for 2013-2014 #90, 2014 CO 63, ¶ 17 (quotations and alterations omitted); *see also Matter of Title, Ballot Title and Submission Clause for 2019-2020 #3*, 442 P.3d 867, 870 (Colo. 2019) (“[T]o conclude that the initiative here comprises multiple subjects would require us to read language into the initiative that is not there and to address the merits of that initiative and suggest how it might be applied if enacted. As noted above, however, we are not permitted to do so.”). Further, Petitioners’ argument that the provision allowing for local governments to be reimbursed for lost revenue resulting from the homestead exemptions for qualifying seniors and disabled veterans creates a single subject is not persuasive. This Court previously has approved of measures with similar revenue offset provisions. *See, e.g., In re Amend Tabor No.32*, 908 P.2d 125, 128–29 (Colo. 1995) (holding initiative that applied a \$60 tax credit to more than one tax and required the state to replace monthly local government revenues lost because of the tax contained a single subject). The Board correctly found that #27 contains a single subject.

III. The title set by the Board is not misleading and does not contain a catch phrase.

A. Standard of review and preservation.

When considering a challenge to a title, the Court should not “consider whether the Title Board set the best possible title.” *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 17. Rather, the Court only “ensure[s] that the title fairly reflects the proposed initiative such that voters will not be misled into supporting or opposing the initiative because of the words that the Title Board employed.” *Id.* The Board agrees that Petitioners preserved a challenge to the title of #27.

B. The title accurately the measure.

The Board’s title for #27 is not misleading. Number 27 proposes reducing the residential and non-residential property tax assessment rates, while allowing the state to retain and spend 25 million annually for five years to offset lost revenue resulting from the homestead exemptions for qualifying seniors and disabled veterans.

The title designated by the Board is as follows:

A change to the Colorado Revised Statutes concerning property tax reductions, and, in connection therewith, reducing property tax revenue by an estimated \$1.03 billion in 2023 and by comparable amounts thereafter by reducing the residential property tax assessment rate from 7.15% to 6.5% and reducing the property tax assessment rate for all other property, excluding producing mines and lands or leaseholds producing oil or gas, from 29% to 26.4% and allowing the state to annually retain and spend up to \$25 million of excess state revenue, if any, for state fiscal years 2022-23 through 2026-27 as a voter-approved revenue change to offset lost revenue resulting from the property tax rate reductions and to reimburse local governments for revenue lost due to the homestead exemptions for qualifying seniors and disabled veterans.”

Record at p 12.

Petitioners argue that the title is misleading because:

- a. The title – particularly as revised at the Proponents’ request at the rehearing – obscures the fact that “local government revenue” will be substantially reduced as a result of the measure;
- b. The title obscures the fact (and subject) that State programs – separate and distinct from local district programs – will suffer an immediate, material, direct, and constitutionally mandated reduction in available funding as a result of the measure;
- c. The title obscures the fact that funding at both the State and local district levels for public schools will be materially impacted as a result of the measure;

d. The title misleadingly describes the minimal and problematic additional revenue authorized from the State to local districts as an “offset;”

e. The title wholly misrepresents the purpose and effect of the measure by converting an authorization to retain and spend revenue “for warrants otherwise authorized” under §39-3-207, C.R.S. (2020) – and for which a “voter-approved revenue change” is therefore completely meaningless and unnecessary under §39-3-209, C.R.S. (2020) – into “a voter-approved revenue change;” and

f. The title is not clear as to whether the authorization for the State “to retain and spend revenue” is for the purpose of (i) “offsetting lost revenue [at the local district level] resulting from a reduction in property tax;” or (ii) funding State reimbursements to local government entities already mandated and facilitated by Colo. Const. art. X, §3.5, §39-3-207, C.R.S. (2020), and §39-3-209, C.R.S. (2020).

Petition at pp 4–5.

These arguments are without merit. The title as set by the Board accurately and properly reflects the intent of the initiative, and Petitioner’s arguments do not demonstrate how the title could be considered insufficient, unfair, or misleading. *See In re Proposed Initiative on Trespass-Streams with Flowing Water*, 910 P.2d at 26; *In re #45*, 234 P.3d at 648. Further, contrary to Petitioner’s first three (arguments (a), (b) and (c)), “the Title Board is not required to explain

the meaning or potential effects of the proposed initiative on the current statutory scheme.” *In re #90*, 2014 CO 63. To be a proper, clear title, the title need not expound on the measure’s effects on state revenue and funding. The Board properly set title for #27.

CONCLUSION

The Court should affirm the decisions of the Title Board.

Respectfully submitted on this 12th day of May, 2021.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S OPENING BRIEF** upon the following parties or their counsel electronically via CCEF, at Denver, Colorado and via Fed Ex overnight delivery, this 12th day of May, 2020, addressed as follows:

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