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 #10 ("Petitions")

Supreme Court Case No. 2021SA64

Petitioners John Ebel and
Donald Creager
co-proponents

v.

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

OPENING BRIEF BY PETITIONERS

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

--co-proponents Ebel and Creager

CERTIFICATE OF COMPLIANCE

I certify this petition for review is under 2,200 words.

John Ebel Type text here
John Ebel

SUMMARY OF ARGUMENT

THE TEXT AND ISSUES ARE THE SAME ON #10 AS ON #8, EXCEPT #10 IS AN "ALTERNATIVE TO THE EXISTING PETITION PROCESS." #10 DOES NOT ADD OR REPEAL ANY CONSTITUTIONAL WORDING; IT AVOIDS ALL AMENDMENT 71 ISSUES. WE HAVE A RIGHT TO CHOOSE A STATUTORY PROCESS INSTEAD OF A CONSTITUTIONAL PROCESS.

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. Petitioners John Ebel and Donald Creager petitioned this court to review and reverse the rehearing decision on January 6, 2021 that denied a ballot title for initiative 2021-2022 #6 ("Petitions"). The board said #6 was 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.

This court denied #6 without explanation so we do not know the reason. There were two objections by the title board. It proposed both a statutory petition to change the petition process and a constitutional repeal of 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Gelender said he had never seen that format, though the board had approved a dozen such combinations in 2020 that repealed a flat rate constitutional income tax rate and simultaneously proposed graduated statutory income tax rates. There is no legal ban on doing both in the same measure. #6 had a clear repeal of itemized constitutional language. Nothing in the constitution says citizens must use strike out type to repeat what is being repealed. Nothing says a proposed statute may not repeal identified constitutional procedures inconsistent with the new wording. Drafts #8 and #9 say specified constitutional language "shall not apply" to its terms. That exclusion is not forbidden by any constitutional wording, nor is there an enacted written formula of a legal format to say so. Stating something does not apply is neither a repeal nor an amendment.

The other change in draft petition #6 was inclusion in the enforcement section of an authority to sue to enforce the measure. Standing is not a separate subject unrelated to the underlying substance of the measure. It is inherently related to it, just like the statement of its effective date, a statement it is self-executing, and other clarifications. We offered to clarify at the board meeting that it applied only to this statute. The board declined to allow that addendum, which it historically has allowed. Drafts #8 and #10 now before this court make that clear; "enforcement" provisions of standing apply only to this text itself.

If the court has some other undisclosed reason for rejecting #6, we are dying to know what it would be.

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 by the state). The state 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 section 1 of Article V of the state constitution. No panic over a germ overrides constitutional rights.

ARGUMENT

The title board has made three novel claims of multiple subjects. First, it calls standard inclusion in the text ("Enforcement" section 4) of a "standing" protection 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" mean any standing to sue anywhere in any case; that is inconsistent with "enforcement" of PRA. One member said it was open-ended even though we said it referred only to PRA. We offered 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 also has the power to add the three words to clarify the text. We have done so in #8 and #10. (The board has now set a too-long title on #10.) The innocuous words relate 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" (i.e. publicized, pre-election) interpretation by petition proponents shall be accorded substantial weight

by this court in enforcing allegedly unclear words. Well, here it is—standing applies.

State staff gave our text a title of "Petitions." They agreed it deals with Colorado petitions only, not litigation anywhere on tort, labor law, or criminal cases. The title board seized on this last sentence to devise another delay tactic by 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 the staff draft title we never discussed did not even list the last sentence as a major feature, much less an unrelated second subject. In any event, the claim the board's novel foray that "standing" is a second subject should be laid to rest.

The second claim of a second subject concerns the drafting style. A member said he had never seen a petition drafted that way. Mr. Gelender 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 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 there 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 citizens. 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. Gelender'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 also violates our First Amendment rights.

Mr. Gelender 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 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 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 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 was not persuasive. We hope it helps this court to do 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; the last sentence of section 6 has nothing to do with standing. It was an overly broad attempt to limit future laws on property taxation. It was a futile legal dictate from the grave (1876) that has itself been changed multiple times (1936, by petition; 1966; and 1975). 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 defer to the title board as much as possible, 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 ballot title for #10 can be shorter.

The February 19, 2020 title set by the board was brief, but imprecise. First, it kept 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 the state to change the constitutional three-month-before-election filing deadline to add three MORE weeks; and 3) apply unconstitutional statutes letting the state disqualify entries in violation of 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 challenges).

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, 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 #8. #9, #10, #11, and #12).

Respectfully submitted on March 19, 2021

John Ebel

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CERTIFICATE OF EMAILING

I certify I emailed this Opening Brief on March 19, 2021 to:

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Attorney for Title Board

/s/ John Ebel
John Ebel

PRA 2021 Sup Ct #10 Open Brief

Final Audit Report 2021-03-19

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