

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, Colorado 80203</p>	
<p>Original Proceeding Pursuant to §1-40-107(2), C.R.S. (20210-22) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2021- 2022 #63</p> <p>Petitioner: Brenda Dickhoner</p> <p>v.</p> <p>Respondents/Proponents: Lea Steed and Donald “DJ” Anderson</p> <p>v.</p> <p>Ballot Title Board: Theresa Conley, David Powell, and Ed DeCecco</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for Respondents/Proponents:</p> <p>Edward T. Ramey, #6748 Tierney Lawrence LLC 225 East 16th Avenue, Suite 350 Denver, CO 80203 Telephone: 720-242-7585 Email: eramey@tierneylawrence.com;</p>	<p>Supreme Court Case No. 2022SA97</p>
<p style="text-align: center;">ANSWER BRIEF OF RESPONDENTS/PROPONENTS LEA STEED AND DONALD “DJ” ANDERSON</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, the undersigned certifies that the brief complies with C.A.R. 28(g). It contains 1,378 words.

Further, the undersigned certifies that the brief complies with C.A.R. 28(k).

For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R.___, p.___), not to an entire document, where the issue was raised and ruled on.

For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

By: s/Edward T. Ramey

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Respondents/Proponents Lea Steed and Donald “DJ” Anderson, through counsel, respectfully submit this Answer Brief.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Respondents/Proponents adopt the Statement of Issues as presented in their Opening Brief. Petitioner’s and the Title Board’s Statements are consistent.

STATEMENT OF THE CASE

Respondents/Proponents adopt the Statement of the Case as presented in their Opening Brief. Petitioner’s and the Title Board’s Statements are consistent.

SUMMARY OF THE ARGUMENT

The title set by the Title Board at its rehearing on Proposed Initiative 2021-2022 #63 correctly and fairly expresses the true meaning and intent of the initiative and clearly advises the voters of the effect of a “yes/for” or “no/against” vote as required by §1-40-106(3)(b), C.R.S. (2021-22).

ARGUMENT

I. The Title Accurately, Clearly, and Fairly Advises the Voters that the Revenue Dedication in the Initiative Is Not Facilitated by an Income Tax Rate Increase.

A. Standard of Review and Preservation of Issue.

All parties agree that the statutory charge to the Title Board is to set a title that correctly and fairly expresses the true meaning and intent of the initiative and

clearly advises the voters of the effect of a “yes/for” or “no/against” vote. The parties also concur that the Title Board is accorded considerable discretion in this regard, employing “all legitimate presumptions in favor of the propriety of the Board’s actions.” *In re Title, Ballot Title & Submission Clause for 2017-2018 #4*, 2017 CO 57, ¶6, 395 P.3d 318, 320 (Colo. 2017).

All parties concur that this issue was preserved through presentation and consideration of Petitioner’s Motion for Rehearing.

B. The Title Board Set an Accurate and Fair Title That Clearly Advises the Voters of the True Meaning and Intent of the Initiative and the Effect of a “Yes/For” or “No/Against” Vote on the Measure.

The single purpose and intended effect of the Proposed Initiative is to direct an additional small percentage (one-third of one percent) of the state’s income tax revenue to the state education fund for a specified use. The Initiative would not accomplish this by raising taxes – or, more specifically, by raising the existing state income tax rate. It would simply re-direct a small portion of an otherwise existing revenue stream.

Following the example of the General Assembly¹, Respondents/Proponents requested at the initial title-setting hearing that the phrase “without raising taxes”

¹ Please see footnote 2, page 6, of Respondents’/Proponents’ Opening Brief.

be included in the title. Their concern was to assure that the voters would not be confused or presume – not unreasonably – that the additional revenue dedication would be accomplished through a tax increase. The Title Board initially agreed.

The Petitioner (and one other elector) raised an objection to the inclusion of this phrase by way of a motion for rehearing. Petitioner’s point was that the initiative also exempted this newly dedicated percentage of income tax revenue from any amount the state or a local district might be required to refund to taxpayers in years when a refund obligation might be triggered by COLO. CONST. art. X, §20(7)’s “spending limits.” In common parlance, this revenue was “de-Bruced.” The Petitioner argues that this exemption from a potential future refund obligation is a “tax increase.”

Noting Petitioner’s concern, the Title Board made two critical adjustments to the title at the rehearing. First, it struck the phrase “without raising taxes” and replaced it with the more specific “without raising the existing state income tax rate.” There is no dispute that this phrase is completely accurate.²

² In its Opening Brief, the Title Board also notes that this language “reduces voter confusion” as, without it, “voters may think the initiative would result in an increase to the tax rate.” Title Board Op. Br. at p. 10. As noted above, this was Respondents/Proponents’ concern as well.

Second, the Title Board replaced the more technical “voter approved revenue change” language – derived from COLO. CONST. art. X, §20(7)(d) itself – with “allowing the additional revenue to be from revenue that the state or a local school district is otherwise required to refund to taxpayers in years in which a refund is due.” While it would be completely inaccurate and misleading to suggest that the potential impact upon problematic future refund obligations (driven by spending limits) equates to a “tax increase,” the Title Board was sensitive to advising the voters that the amount of a future refund obligation could be impacted.

Notwithstanding the Title Board’s well-considered responses, the Petitioner continues to object. Petitioner argues “Initiative #63 increases the income tax (and consequently the percentage rate of income tax) paid by taxpayers in TABOR refund years.” Pet. Op. Br. p. 4. The Proposed Initiative would have absolutely no effect on the income tax or percentage rate of income tax in “refund years” or any other year; it’s only potential effect would be upon the amount of potential *refunds* – driven by COLO. CONST. art. X, §20(7) spending-limits. The Title Board has clearly disclosed this.

Petitioner then argues that the Title Board is wholly precluded from disclosing in the title that the proposed revenue dedication would not involve

“raising the existing state income tax rate” – arguing that this “does not relate to a central feature of the measure” (and indeed “is not a feature of the measure at all”). In fact, it is very much a central feature of the measure – it is explicitly recited in subsection (8) of Section 1 (Statement of purpose) of the Proposed Initiative, and it is central to the choice of dedicating “an additional amount of state revenue” – rather than raising taxes (or tax rates) and thereby creating a new or enhanced revenue stream – for this purpose. The voters are entitled to know this, and the Title Board is charged with “enabl[ing] the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal.” *In re Title, Ballot Title and Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶23, 328 P.3d 155, 162 (Colo. 2014).³

³ Compare also (as cited in Respondents/Proponents Opening Brief), *In re Title, Ballot Title, and Submission Clause for 2011-2012 #45*, 2012 CO 26, ¶24, 274 P.3d 576, 582 (Colo. 2012); *In re Title, Ballot Title and Submission Clause, and Summary Pertaining to the Sale of Table Wine in Grocery Stores Initiative*, 646 P.2d 916, 921 (Colo. 1982) (the fact that specific wording is not found in the text of an initiative “does not preclude the Board from adopting language which explains to the signers of a petition and the voter how the initiative fits in the context of existing law”).

II. The Title Is Not Confusing or Misleading as to the Effect of the Initiative on Revenue or Refunds.

A. Standard of Review and Preservation of Issue.

Respondents/Proponents adopt their statement of the standard of review in Section I(A), above.

Respondents/Proponents further state that the issue was preserved by the Petitioner in Part II of her Motion for Rehearing (pp. 3-4).

B. The Title Set By the Title Board is Neither Misleading Nor Confusing as to the Effect of the Initiative on Revenue or Refunds.

Addressing the concerns raised by the Petitioner at the rehearing, the Title Board – as noted above – took another step to enhance the clarity of the title. It replaced the generally-used-but-less-explanatory phrase “voter approved revenue change” – derived from the text of COLO. CONST. art. X, §20(7)(d) itself – with “allowing the additional revenue to be from revenue that the state or a local school district is otherwise required to refund to taxpayers in years in which a refund is due.”

This revision addresses precisely the point of the Petitioner’s own confusion – clearly and accurately informing the voters that the Proposed Initiative (1) would not raise their income tax rate but (2) could reduce the amount of a taxpayer refund in years in which a COLO. CONST. art. X, §20(7)(d) refund would be due. This

revision clearly addresses Petitioner’s concerns – and it does so without hopelessly confusing the content and misrepresenting the effects of the measure as the Petitioner seeks to do.

CONCLUSION

Respondents/Proponents respectfully renew their request to the Court to affirm the actions of the Title Board and to enter such further Orders as it may deem appropriate in these proceedings.

Respectfully submitted this 23rd day of May, 2022.

s/Edward T. Ramey

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of May, 2022, a true and correct copy of the foregoing was filed via the Court's e-filing system upon the following:

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