

COLORADO SUPREME COURT

2 East 14th Avenue,
Denver, Colorado 80203

Original Proceeding
Colo. Rev. Stat. § 1-40-107(2)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative 2021-
2022 #63

Petitioner:

Brenda Dickhoner

v.

Respondents/Proponents:

Lea Steed and Donald "DJ" Anderson

and

Title Board:

Theresa Conley, David Powell, and Ed DeCecco

COURT USE ONLY

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Case No.: 2022SA97

Petitioner's Answer Brief

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with all requirements of Colorado Appellate Rules 28 and 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in Colorado Appellate Rule 28(g).

It contains **559** words (opening brief does not exceed 9,500 words).

The brief complies with the standard of review requirements set forth in Colorado Appellate Rule 28(a)(7)(A).

For each issue raised by Petitioner, 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 Colorado Appellate Rules 28 and 32.

s/ Gwendolyn A. Benevento

Gwendolyn A. Benevento

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Petitioner Brenda Dickhoner hereby respectfully submits this Answer Brief opposing the title, ballot title, and submission clause (the “Title”) set by the Title Board for Proposed Initiative 2021-2022 #63 (“Proposed Initiative”).

ARGUMENT

I. The phrase “without raising the existing state income tax rate” does not accurately describe the measure.

Respondents argue that the phrase “without raising the existing state income tax rate” is accurate. Even assuming it is an accurate statement, it does not accurately describe the measure.

If the Title had been drafted to clarify, generally, that the transfer of funds is from existing revenue, not new sources of revenue, this would be more acceptable as a correct and fair expression of the true meaning and intent of the initiative. See *In re Title, Ballot Title and Submission Clause, and Summary for 2009-2010 #91*, 235 P.3d 1071, 1076 (Colo. 2010). Instead, the chosen phrase highlights one revenue source that is not increased to create additional education funding. It would have been just as relevant to use the phrase “without raising the existing

state sales tax rate,” because the state’s education funding comes mostly from state income and sales taxes.¹

The Title Board must summarize only the “central features” of the proposal. *In re Proposed Initiated Petitions*, 907 P.2d 586, 591 (Colo. 1995). The Title Board should not be permitted to include a selected and attractive description of an effect that the measure will not have when that noneffect is not a central feature of the measure and is not even a comprehensive explanation of similar relevant noneffects. Permitting this Title to stray so far from describing the central features will encourage requests for title language infused with bias and give the Title Board discretion to allow it.

II. The Title should explain to voters the measure increases state revenue from taxes in years where a TABOR refund would otherwise be required.

Voters should be informed that the Initiative would reduce their TABOR refund in years where a refund is required. The Board is not required to set out every detail of the measure in the title, but does have a duty to inform the voter, “whether familiar or unfamiliar with the subject matter of a particular proposal.” *In re Title, Ballot Title, and Submission Clause for Proposed Initiatives 2001-02*

¹ https://leg.colorado.gov/sites/default/files/2020_booklet_-_final.pdf

#21& #22, 44 P.3d 213, 222 (Colo. 2002); *In re Title, Ballot Title and Submission Clause for 2013-2014 #90*, 328 P.3d 155,162 (Colo. 2014).

It is safe to say that most voters are not familiar with how TABOR works. *See Hedges v. Schler (In re Title, Ballot Title & Submission Clause for 2019-2020 #3)*, 442 P.3d 867, 875 (Colo. 2019) (Márquez, M., dissenting) (“TABOR's breadth is immense, its subject matter complex.”). Petitioner seeks to help voters understand that the proposal is not neutral when it comes to a their pocketbook; it allows the government to keep more taxes in certain years by allowing funds to be retained and spent for in years when all or a portion of that revenue would otherwise have to be refunded to taxpayers as a result of a Colo. Const. art. X, §20(7) “spending limit” overage.

CONCLUSION

For these reasons and the reasons presented in Petitioner’s Opening Brief, Petitioners respectfully request that the Court should vacate the titles and remand with instructions to return the Initiative with instructions to correct the deficient title.

Dated: May 23, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2022, I electronically filed a true and correct copy of this **Petitioner's Answer Brief** with the Clerk of Court via the Colorado Courts E-Filing System which will send notification of such filing upon counsel of record:

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