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| <p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p> | |
| <p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2021-2022) 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>Petitioners: Brenda Dickhoner</p> <p>v.</p> | |
| <p>Respondents/Proponents: Lea Steed and Donald “DJ” Anderson, Proponents,</p> <p>and</p> <p>Title Board: Theresa Conley, David Powell and Ed DeCecco.</p> | <p>▲ COURT USE ONLY ▲</p> <p>Case No. 2022SA97</p> |
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| <p>THE TITLE BOARD’S ANSWER BRIEF</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, 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 669 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.

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SUMMARY OF ARGUMENT

This Court should affirm the title as set by the Title Board for Proposed Initiative 2021-2022 #63 (“#63”) for the reasons stated in the Board’s opening brief. This answer brief responds to the arguments raised by Petitioner Brenda Dickhoner’s opening brief.

The Board properly exercised its drafting discretion in setting a ballot title that complies with the clear title rule. The title for #63 is accurate. While the proposed initiative would dedicate an additional percentage of revenue produced under the existing state income tax rate to the state education fund, the state income tax rate does not change in any year. Read as a whole, the title is not confusing.

In addition, by including the phrase “without raising the existing state income tax rate,” the Board was describing the effect of the initiative on the state income tax rate. This is a central feature of the measure because it clarifies for voters where the additional revenue is coming from: existing revenue sources. This clarification accurately and fairly expresses the true intent of the proposed initiative.

ARGUMENT

I. The title satisfies the constitutional clear title requirement.

Petitioner argues “#63 increases the income tax (and consequently the percentage rate of income tax) paid by taxpayers in TABOR refund years” because it “would reduce the amount of refund that would otherwise be paid to taxpayers in years where refunds are due.” Pet. Opening Brief at 4. While the proposed initiative would dedicate an additional percentage of revenue produced under the existing state income tax rate to the state education fund, the state income tax rate does not change in any year. *Rehearing Before Title Board on Proposed Initiative 2021-2022 #63* (Apr. 6, 2022), available at https://csos.granicus.com/player/clip/301?view_id=1&redirect=true (statements starting at 46:50 and 1:25:35). By including the phrase “without raising the existing state income tax rate,” the Board clarified that the transfer of funds is from existing revenue sources. As such, the title is accurate.

Moreover, during the rehearing when the Board changed “without raising taxes” to “without raising the state income tax rate,” the Board further clarified that the initiative would “allow[] the additional revenue to be from revenue that the state or local school district is otherwise required to refund to taxpayers in years in which a refund is due.” *Id.* When read as a whole, the title clearly reflects the intent of the initiative. See *In re Title, Ballot Title and Submission Clause, and Summary for 2009-2010 #45*, 234 P.3d 642, 649 n.3 (Colo. 2010); *In re Proposed Initiative on Trespass-Streams with Flowing Water*, 910 P.2d 21, 26 (Colo. 1996) (this Court reads the title as a whole to determine whether it properly reflects the intent of the initiative.).

Petitioner also argues that the title is unclear because “without raising the existing state income tax rate” is not a central feature of the measure. Pet. Opening Brief at 7. This argument fails because describing the effect of the initiative on the state income tax rate is a central feature of the measure because it clarifies for voters where the additional revenue is coming from: existing revenue sources. By including the phrase “without raising the existing state income tax

rate,” the Board clarified that the transfer of funds is from existing revenue sources. If anything, the language chosen by the Board reduces voter confusion: without the phrase “without raising existing state income tax rate,” voters may think the initiative would result in an increase to the tax rate. This more adequately advises voters that the initiative will not result in an increase in the state income tax rate. In taking all legitimate presumptions in favor of the propriety of the Board’s actions, it was proper for the Board to make this clarification as it accurately and fairly expresses the true intent of the proposed initiative. *See In re Title, Ballot Title and Submission Clause, and Summary for 2009-2010 #91*, 235 P.3d 1071, 1076 (Colo. 2010).

CONCLUSION

This Court should affirm the Title Board’s action in setting title for #63.

Respectfully submitted this 23rd of May, 2022.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S ANSWER BRIEF** upon the following parties electronically via CCES, at Denver, Colorado, this 23rd day of May, 2022, addressed as follows:

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