

<p>SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, Colorado 80203</p>	
<p>Original Proceeding Pursuant to Colo. Rev. Stat. §1-40-107(2) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023- 2024, #96</p> <p>Petitioners: SCOTT WASSERMAN and ED RAMEY</p> <p>v.</p> <p>Ballot Title Board: THERESA CONLEY, CHRISTY CHASE, and KURT MORRISON</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Petitioners:</p> <p>Edward T. Ramey, #6748 Tierney Lawrence LLC 225 East 16th Avenue, Suite 350 Denver, CO 80203 Telephone: 303-949-7676 Email: eramey@TLS.legal</p>	<p>Supreme Court Case No. 2023SA336</p>
<p>PETITIONERS' 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).

The brief contains 1,176 words.

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/ Edward T. Ramey
Edward T. Ramey, #6748

TABLE OF CONTENTS

Statement of the Issue Presented for Review.....	1
Summary of the Argument.....	1
Argument.....	2
Conclusion.....	6

TABLE OF AUTHORITIES

Pages(s)

Cases:

In re Title, Ballot Title & Submission Clause for 2015-2016 #156,
2016 CO 56, 413 P.3d 151 (Colo. 2016).....6

Statutes:

§1-40-106(3)(b), C.R.S. (2023).....1, 2, 6

Colorado Constitution:

Colo. Const. art. X, §20(2)(b).....4

Colo. Const. art. X, §20(3)(c).....1, 4

Petitioners Scott Wasserman and Ed Ramey, Designated Representatives of the Proponents for Proposed Initiative 2023-2024 #96, respectfully submit their Answer Brief.

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

The parties' Opening Briefs state the issue on review similarly – but differently in one material respect. The ballot title language at issue is the use of the specific phrase “shall state taxes be increased” – a phrase drawn from subsection (3)(c) of Colo. Const. art. X, §20 (“The Taxpayer’s Bill of Rights” or “TABOR”). Petitioners submitted that the recital of this phrase in the ballot title (1) was not mandated under a reasonable interpretation of TABOR and (2) was materially misleading in the context of this initiative. The Title Board appears to concur on review that use of the phrase (1) is indeed *not* required by TABOR – yet submits that it (2) independently “meets the clear title requirement” of §1-40-106(3)(b), C.R.S. (2023), and was therefore within the Board’s discretion to use.

SUMMARY OF THE ARGUMENT

The parties' concurrence that TABOR should not be read to require use of the phrase “shall state taxes be increased” in the title and ballot title for this initiative leaves the question whether discretionary use of that particular phrase – at the outset of the ballot title (as it would appear if required by TABOR) – meets

the “clear-title” requirements of §1-40-106(3)(b), C.R.S. (2023). The answer to that question turns on whether those words, and the primacy of their placement, accurately and clearly express the “true intent and meaning” of the measure, and “the effect of a ‘yes/for’ or ‘no/against’ vote” thereon. Petitioners respectfully submit they do not.

ARGUMENT

The initiative at issue conditionally creates a new state tax. The tax would only be levied and applied to a clearly specified class of residential real property (1) in the event “the amount of statewide property tax revenue has been reduced by imposition of a statewide limitation upon the amount or growth of property tax revenue” and (2) “in an amount sufficient to replace that reduction in revenue.” The replacement revenue would promptly be disbursed in full by the state to the state’s political subdivisions to replace and backfill “revenue lost to local communities” as a result of the triggering statewide limitation. The revenue would not be available to fund state services or programs.

There are no material disagreements between the Petitioners and the Title Board regarding the ballot title’s recitation of the principal elements and implementation parameters of the proposed conditional new tax. The sole point of contention on this review is the use and prominent placement of the phrase “shall

state taxes be increased” – widely recognized by Colorado voters as mandated by TABOR and prominently signaling an increase in their taxes – at the commencement of the title.

It is correct that the initiative would create a new, albeit conditional, state tax. However – (1) no revenue produced by the tax would be retained by the state or made available to fund state programs or services; (2) all of its revenue would be distributed promptly to political subdivisions (“local districts” in TABOR parlance) to use exclusively for local community programs and services; and (3) at the collective (statewide) local level, the new revenue would be in an amount no greater than necessary to offset local revenue lost by virtue of the concurrent imposition of the triggering limitation upon the amount or growth of local property tax revenue (the “net-zero” effect).

In its Opening Brief, the Title Board poses the question of whether “net-zero” is an accurate descriptor – noting that the state would receive an “initial” (albeit very temporary) revenue increase from the conditional new tax until such time as that revenue is disbursed (in its entirety and prior to the end of the year in which received) to the state’s political subdivisions. Upon such prompt and mandatory disbursement, the effect at both the state level and at the collective local district level is designed to be essentially “net-zero.”

Petitioners acknowledge that the structure and purpose of the proposed ballot initiative at issue is somewhat unique – and that it poses some challenging, and perhaps a few novel, ballot-title-formulation issues. The Title Board certainly grasped this,¹ and the Petitioners raise very few – indeed only one – objection to the ballot title that emanated. Commencing what is already (and necessarily) a moderately complex – and informative – ballot title with the words “shall state taxes be increased” communicates out-of-the-blocks a materially misleading message to Colorado voters about all that follows. Whether the Board adopted this prefatory language because it believed the language to be mandated by TABOR, or upon its own motion, it is equally confusing and misleading.

First, “state taxes” – particularly in the context of this familiar TABOR phrase – suggests taxes collected by the state as a TABOR “district” to fund programs and services of that “district.” *Cf.*, Colo. Const. art. X, §20(2)(b), (3)(c). In fact, *no* revenue from this tax would be available to fund any state programs or services. All of the revenue would promptly flow to local “districts” to replace a reduction in *their* revenue – *i.e.*, to fund local programs and services – resulting

¹ At one point of collective good humor during an exhaustive rehearing – and noting the challenges of titling this measure – a Board member mused “can’t we just call the Supreme Court right now . . .?” [Audio at 1:03]

directly from the triggering and concurrent imposition of a statewide limitation upon that local revenue.

Second, there will be no net increase in statewide revenue – state or local (the “net-zero” effect). Any tax “increase” is conditioned upon and tailored to countering a contemporaneous and triggering imposition of a tax “decrease.” While individual tax burdens would be altered – and while that assuredly must be (and is) clearly expressed in the ballot title – it is manifestly misleading to the voters to stamp the functional bundle with the familiar TABOR-esq preface as a “state tax increase.”

Third, there is – and of course can be – no indication in the “shall state taxes be increased” preface as to the potential magnitude of the conditional “increase.” That would be dependent upon the separate, unknowable, and currently completely hypothetical imposition of a future limitation upon the growth or amount of statewide property tax revenue. Yet employing the TABOR-esq preface without an estimate suggests the possibility of an unlimited and wholly unconstrained tax increase – far from any realistic (or even possible) result under the language of the measure itself. At its essence, “the clear title requirement seeks to accomplish two overarching goals: prevent voter confusion and ensure that the title adequately

expresses the initiative’s intended purpose.” *In re Title, Ballot Title & Submission Clause for 2015-2016 #156*, 2016 CO 56, ¶11, 413 P.3d 151, 153 (Colo. 2016).

CONCLUSION

For the reasons set forth above, Petitioners respectfully renew their request to the Court to return this Proposed Initiative to the Title Board with direction to prepare a title, ballot title and submission clause that complies with the “clear title” requirements of §1-40-106(3)(b), C.R.S. (2023), by removing the phrase “shall state taxes be increased” from the ballot title.

Respectfully submitted this 5th day of February, 2024.

/s/ Edward T. Ramey
Edward T. Ramey #6748
Tierney Lawrence Stiles LLC
225 E. 16th Avenue, Suite 350
Denver, CO 80203
eramey@TLS.legal
303-949-7676

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2024, I electronically filed this Opening Brief with this Court via the Colorado Courts E-Filing system and electronically served a copy upon Counsel for the Ballot Title Board at:

Michael Kotlarczyk
Senior Assistant Attorney General
Ruchi Kapoor
Assistant Attorney General
Public Officials Unit
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203
Mike.Kotlarczyk@coag.gov
Ruchi.Kapoor@coag.gov

/s/ Edward T. Ramey