

SUPREME COURT, STATE OF COLORADO

2 East 14th Avenue
Denver, Colorado 80203

Original Proceeding
Pursuant to § 1-40-107(2), C.R.S.
Appeal from the Initiative Title Setting Review Board

Petitioners:

Wayde Goodall and Darcy Schoening

v.

Title Board: Theresa Conley, Kurt Morrison, and
Jeremiah Barry

Attorneys for Petitioners:

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Supreme Court Case No.:

**PETITION FOR REVIEW OF FINAL ACTION OF THE BALLOT TITLE
SETTING BOARD CONCERNING PROPOSED INITIATIVE 2023-2024 #175
("PROHIBIT CERTAIN MEDICAL PROCEDURES FOR MINORS")**

Pursuant to section 1-40-107(2), C.R.S., Wayde Goodall, a registered elector of El Paso County and the State of Colorado, and Darcy Schoening, a registered elector of El Paso County and the State of Colorado (collectively, the “Petitioners”), through undersigned counsel, respectfully petition this Court to review the decision of the Initiative Title Setting Review Board (the “Title Board”) that the Proposed Initiative 2023-2024 #175¹ (“Initiative #175”) contains multiple subjects and that the Title Board lacks jurisdiction to set title, and to review whether the Title Board erred in holding that the revisions made and submitted by the Petitioners on April 5, 2024, were impermissible per the Colorado Constitution.

I. STATEMENT OF THE CASE

A. Procedural History of Initiative #175

Petitioners are the designated representatives for Initiative #175. They properly filed the measure with the Title Board on February 22, 2024. Prior to filing it, Petitioners submitted the text, as required in accordance with section 1-40-105(1), C.R.S., to Legislative Council Staff and the Office of Legislative Legal Services, amending the measure accordingly.

At the initial Title Board hearing held on March 6, 2024, the Title Board approved the measure, holding that Initiative #175 was a single subject as required

¹ <https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/index.html>

by Article V, Section 1(5.5) of the Colorado Constitution and section 1-40-106.5, C.R.S., and set a title accordingly. A motion for rehearing was filed on March 13, 2024, by third parties. At the rehearing on April 3, 2024, the original decision was reversed and the title setting was denied on the grounds that the measure contained multiple subjects, contrary to Article V, Section 1(5.5) of the Colorado Constitution, leading the Title Board to hold that it lacked jurisdiction to set title.

While Petitioners maintain that the language submitted on February 22, 2024, which was originally approved by the Title Board, constitutes a single subject, they chose to revise and resubmit the measure as permitted by Article V, Section 1(5.5) of the Colorado Constitution, which allows a measure to “be revised and resubmitted for fixing of proper title without the necessity of review and comment.” On April 5, 2024, in a good faith effort to accommodate both the Title Board and those who filed the motion for rehearing, Petitioners submitted to the Title Board revisions that changed some language from the measure to limit and clarify but not change the scope or meaning of the measure so as not to be so substantial as to require additional review and comment.

Per the Colorado Secretary of State’s website, the last day for a Title Board hearing for measures that will appear on the November 2024 General Election ballot was April 17, 2024. The hearing for the revised language submitted by

Petitioners was set for that day. At the hearing, the Title Board denied the setting of title for the now revised language, citing that the board lacks jurisdiction as the Petitioners not only eliminated but added language and, therefore, had failed, in its view, to file the measure in accordance with Article V, Section 1(5.5) of the Colorado Constitution. This decision was made in error.

Article V, Section 1(5.5) of the Colorado Constitution states:

the measure may be revised and resubmitted for the fixing of a proper title without the necessity of review and comment on the revised measure in accordance with subsection (5) of this section, unless the revisions involve more than the elimination of provisions to achieve a single subject, or unless the official or officials responsible for the fixing of a title determine that the revisions are so substantial that such review and comment is in the public interest. (emphasis added)

The Title Board, however, pursuant to item #13 of the current version of its Policies & Procedures², interprets the “or” in Article V, Section 1(5.5) to be an “and” such that no revisions may contain additions irrespective of whether the revisions are substantial, leading them to wrongly deny the Petitioners, in this case, title. Further, Article V, Section 1(5.5) only requires additional review for “revisions involv[ing] more than the elimination of provisions to achieve a single subject” The Title Board’s interpretation of this language misconstrues “provisions” to mean

² <https://www.sos.state.co.us/pubs/elections/Initiatives/files/2021-2020TitleBoardPoliciesAndProcedures.pdf>

“language.” On the contrary, a revision that does not eliminate a provision, but merely alters the language in a non-substantive manner, is neither the addition nor elimination of a provision; it is less than an elimination of a provision. Here, Petitioners simply clarified a provision, which is not a revision that is “more than the elimination of provisions,” but is in fact less.

B. Jurisdiction

Petitioners now seek review of the Title Board’s actions under section 1-40-107(2), C.R.S. Petitioners have timely filed this review within 7 days from April 23, 2024, the date on which the Secretary of State furnished the certified copies required by Section 1-40-107(2), C.R.S.

II. ISSUE PRESENTED FOR REVIEW

A. Whether the Title Board erred by failing to set a title for Initiative #175 because the measure’s provisions advance a single subject and because the Title Board does rightly have jurisdiction to set it.

B. Whether the Title Board erred in holding that the revisions made and submitted by Petitioners on April 5, 2024 were impermissible per the Colorado Constitution.

III. REQUIRED DOCUMENTATION

Pursuant to section 1-40-107(2), attached are certified copies of:

- (1) the final revised text of Initiative #175 as submitted to the Title Board by Petitioners on April 5, 2024;
- (2) the text of Initiative #175 as submitted to the Title Board by Petitioners on February 22, 2024;
- (3) the rulings and final action by the Title Board;
- (4) the Motion for Rehearing filed by third parties; and
- (5) the fiscal summary for Initiative #175.

IV. RELIEF REQUESTED

Petitioners respectfully request that this Court hold that the Title Board erred in determining that it does not have jurisdiction to set title for Initiative #175 because the measure contains a single subject as revised and submitted by Petitioners on April 5, 2024, or in the alternative, as submitted to the Title Board on February 22, 2024; reverse the Title Board's decision that the revisions made and submitted by Petitioners on April 5, 2024, were impermissible per the Colorado Constitution; and remand Initiative #175 to the Title Board to set a title for the November 2024 General Election ballot.

Respectfully submitted on April 24, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2024, I electronically filed a true and correct copy of the foregoing **PETITION FOR REVIEW** with the clerk of the court via the Colorado Courts E-Filing system and on all parties and their counsel of record:

Title Board:

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