

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED: April 8, 2024 4:30 PM</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 2023-2024 #142</p>	
<p>Petitioner: Mary Elizabeth Childs, v.</p>	
<p>Respondents: Lori Gimelshteyn and Erin Lee</p>	<p>▲ COURT USE ONLY ▲</p>
<p>and</p>	<p>Case No. 2024SA63</p>
<p>Title Board: Theresa Conley, Jeremiah Berry, and Kurt Morrison.</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 1,541 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.

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REPLY ARGUMENT

I. #142’s title accurately summarizes the persons “with legal custody of a child” entitled to notice under the proposed initiative.

Petitioner Childs argues that the phrase “parent or legal guardian,” as it appears in proposed initiative 2023-2024 #142’s (“#142”) title, is “inaccurate shorthand” for the measure’s definition of “parent” as any person “who has legal custody of a child.” Pet’rs Op. Br. 8. This point fails to overcome the Title Board’s (the “Board”) discretion in setting a title that summarizes #142’s central features for two reasons. *In re Title, Ballot Title, & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 24 (explaining the Board’s discretion to resolve “interrelated problems of length, complexity, and clarity” when setting title).

First, the phrase “parent or legal guardian” is widely used to refer to the person or entity—whether a natural parent, adoptive parent, non-parent relative, or other court-designated adult or entity—charged with custody of a child. *See, e.g., Cal. Dep’t of Soc. Servs. v. Thompson*, 321 F.3d 835, 838 (9th Cir. 2003) (defining a child’s “parents or legal

guardians” as “the adults who have legal custody of the child”); *People v. S.M.D.*, 864 P.2d 1103, 1104 (Colo. 1994) (referring to the public entity with “legal custody” of a child as his “legal guardian”). For example, in *People v. Barrios*, 2019 CO 10, this Court interpreted a statute that renders inadmissible certain statements made by juveniles in custodial interrogation “unless a parent, guardian, or legal or physical custodian” was present or waived this requirement. *See* §§ 19-2-511(1), (5), C.R.S. (2018). This Court summarized the relevant provisions of that statute as follows:

Section 19-2-511 provides that statements made by juveniles during any custodial interrogation are generally not admissible unless a parent or legal guardian is present. § 19-2-511(1). Statements may be admissible without a guardian's presence, however, if both the guardian and the juvenile expressly waive the guardian's presence in writing after they both receive a full advisement of the juvenile's rights.

Barrios, 2019 CO 10, ¶ 13 (emphases added).

In doing so, this Court employed the same “shorthand” as the Board in #142’s title: treating “parent or legal guardian” or simply “guardian” as blanket terms covering all legal custodians. *Id.* This usage both

reflects the words' everyday meaning and tracks the dictionary definitions of "legal" and "guardian." *See* Legal, Black's Law Dictionary (11th ed. 2019) ("Of, relating to, or involving law generally; falling within the province of law[,] [e]stablished, required, or permitted by law); Guardian, Black's Law Dictionary (11th ed. 2019) ("Someone who has the legal authority and duty to care for another's person or property.").

Second, despite asserting that "there are many legal custodians of children who are not parents or legal guardians," Petitioner fails to identify a single example—in Colorado or anywhere else—of a child's legal custodian who could not be described, accurately, as the child's "legal guardian" as that phrase is commonly used. *See* Pet'r's Op. Br. at 8–9 (offering grandparents with legal custody, county departments of social services or child placement agencies appointed pursuant to § 19-3-508(1)(c) or § 19-1-115(6), and "psychological parents" who obtain legal custody as examples of legal custodians that are "not parents or legal guardians"). A custodial grandparent is accurately described as a child's "legal guardian." *See Barrios*, 2019 CO 10, ¶ 3 (describing child's great-

grandmother as his “legal guardian”). As is a county department of social services with legal custody of a child. *See S.M.D.*, 864 P.2d at 1104, 1107 (describing the Adams County Department of Social Services, with “legal custody” of a child, as his “legal guardian”). As is a “psychological parent”¹ awarded legal custody of a child. *See Sarah E. Oliver, Adapting to the Modern Family: Recognizing the Psychological Parent in Child Welfare Proceedings*, 33 *Child. Legal Rts. J.* 267, 267–68, 273 (2013) (explaining a “psychological parent” may have “no established legal right to custody” of a child but may obtain that right by obtaining “legal guardianship over the child”).

But even if Petitioner had identified an unusual circumstance in which a person with “legal custody of a child” as defined by #142 did not fall within the plain and ordinary meaning of “parent or legal guardian”

¹ The Colorado Court of Appeals has defined a “psychological parent” as “someone other than a biological parent who develops a parent-child relationship with a child through day-to-day interaction, companionship, and caring for the child.” *In re Marriage of Martin*, 42 P.3d 75, 77 (Colo. App. 2002). Psychological parents may have standing to seek the same parental rights—including custody—enjoyed by biological or adoptive parents. *See In re E.L.M.C.*, 100 P.3d 546, 559 (Colo. App. 2004).

in #142's title, that example would not establish a clear title violation. Titles are not intended to cover every "conceivable hypothetical" application of a proposed initiative, but only to reflect its "essential concept." *In re Title, Ballot Title & Submission Clause, & Summary For 1999-2000 No. 255*, 4 P.3d 485, 497 (Colo. 2000); see *Blake v. King*, 185 P.3d 142, 146 (Colo. 2008) ("[N]ot every detail must be set out in the titles."). The essential concept of #142 is that notice of "gender incongruence" will be provided to a child's parents (if a child's parents are the adults charged with custody) or to a child's legal guardians (if not). The title need not address the application of #142 to every possible permutation of a child's custody arrangements to convey this essential point to voters, and the Board did not exceed its discretion by summarizing the universe of potential legal custodians as "parents or legal guardians."

II. #142's title does not suggest that notification could be provided to only one parent or legal guardian.

Petitioner also argues that notice under #142, if adopted by the voters, "cannot simply be provided to one parent" and therefore the title's

“failure to inform voters that . . . notification must be provided to every person that has ‘parent’ status” amounts to a clear title violation. Petr’s Op. Br. 13, 14. This argument suffers from a faulty premise. Nothing in #142’s title suggests that a notifier could choose one parent or legal guardian over another.

To the contrary, the title fixed by the Board uses plural nouns to describe the persons entitled to notice under #142: “An amendment to the Colorado Revised Statutes requiring any person associated with any school to notify the *parents* or *legal guardians* that their child is experiencing gender incongruence.” Record, p 7 (emphases added). This plural formulation matches that of the proposed initiative itself: “Any public school representative who obtains information that a child enrolled in their public school is experiencing gender incongruence shall notify *the child’s parents*.” *Id.* at 3 (emphasis added). It succinctly conveys that *parents* or *guardians*—not “a parent” or “one legal guardian”—will

receive notice under #142.² No more was required of the Board to satisfy its duty to set a title reflecting the proposed initiative’s central features. *In re #90*, 2014 CO 63, ¶ 24.

Petitioner advances related arguments about the “potential for controversy if this measure is adopted” given the real “prospect of conflicts between two divorced parents . . . or between a parent and a legal guardian,” the “potential disruption to the child from [those parents’ or guardians’] conflicting decisions,” and the difficulty public school representatives would face in attempting to “divine all of the persons” entitled to notice under #142. Petr’s Op. Br. 13–15 (citing *In re D.I.S.*, 249 P.3d 775, 783 (Colo. 2011) (expressing concern that parents “not interfere with [a] guardian’s decisions” lest the child “be faced with conflicting decisions inconsistent with the delegation of custody”). At bottom, these

² Unlike the title *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 215*, 3 P.3d 11, 16 (Colo. 2000), which voters could construe as proposing to prohibit all mining expansion rather than only the modification of existing permits, #142’s title correctly recites the scope of notice under #142, the persons entitled to such notice, and does not suggest that notifiers could choose to provide notice to one legal custodian but withhold notice from another.

are arguments that #142 is an unwise law, not that #142's title is unclear. *See Blake*, 185 P.3d at 148. The Court's role in appeals from decisions of the Title Board is "not to determine the merits of a proposed initiative" but rather whether the title is "fair and accurate." *In re #90*, 2014 CO 63, ¶ 8 ("We will reverse the Title Board's decision only if a title is insufficient, unfair, or misleading."). Petitioners' concerns about #142's potential applications or negative consequences if adopted by the voters do not bear on that determination. *In re Title, Ballot Title, & Submission Clause, Summary for 1997-98 No. 30*, 959 P.2d 822, 825 n.2 (Colo. 1998) (explaining the Court must "exercise caution to avoid determining how a measure, not yet approved by the voters, may apply").

The Board's title accurately recites #142's requirement that notice be provided to a child's "parents or legal guardians." Because the title fairly reflects proposed initiative #142 and is not insufficient, unfair, or misleading, it should be affirmed.

CONCLUSION

The Court should affirm the title set by the Title Board.

Respectfully submitted on this 8th day of April, 2024.

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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 CCEF, at Denver, Colorado, this 8th day of April, 2024, addressed as follows:

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