

COLORADO SUPREME COURT
2 East 14th Avenue
Denver, CO 80203

Original Proceeding Pursuant to
§ 1-40-107(2), C.R.S. (2021-2022)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative
2023-2024 #21 (“Limitation on Property Tax
Increases”)

Petitioner: Dianne Criswell,

v.

Respondents: Suzanne Taheri and Steven
Ward,

and

Title Board: Theresa Conley, Eric Meyer,
and Ed DeCecco.

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Case No. 2023SA109

THE TITLE BOARD’S ANSWER BRIEF

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 696 words.

/s/ Michael Kotlarczyk

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REPLY ARGUMENT

- I. **Petitioner’s single subject objection asks this Court to speculate as to how the initiative may be applied in the future, which the Court cannot do.**

This Court’s “limited review of the Title Board’s actions” does not allow it to “determine the future application of an initiative in the process of reviewing the action of the Title Board in setting titles for a proposed initiative.” *In re Title, Ballot Title, & Submission Clause for 1999-2000 #235(a)*, 3 P.3d 1219, 1225 (Colo. 2000).

But Petitioner’s single-subject argument asks the Court to do precisely that. Petitioner speculates that “local budgets for fire protection could increase” under #21 if certain economic conditions exist or certain legislative actions take place. Pet’rs Op. Br 12. But neither the Board nor this Court can engage in “mere speculation about the potential effects of the Initiative” when determining whether a measure contains a single subject. *In re Title, Ballot Title, & Submission Clause for 2007-2008 #62*, 184 P.3d 52, 59 (Colo. 2008). Instead, the Board and the Court “must examine the initiative’s wording to determine whether

it comports with the constitutional single-subject requirement.” *In re Title, Ballot Title, & Submission Clause for 2019-2020 #3*, 2019 CO 57, ¶ 8. Here, the wording of the initiative makes clear that the \$100 million offset is “for the purpose of offsetting revenue resulting from” the property tax cap imposed in section 1 of the measure. *See* Record, p 2, filed Apr. 26, 2023. The initiative thus makes clear that the offset is “necessarily and properly connected” to the property tax cap itself. *In re Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 2014 CO 52, ¶ 8.

Petitioner argues that the Title Board, rather than Petitioner, is engaged in speculation because the Board’s single-subject determination rests on “some hypothetical possibility that state reimbursements could offset some loss of local revenue for fire protection spending.” *See* Pet’rs Op. Br. 13. But the record makes clear that Petitioner is the one engaged in speculation, for two reasons. First, according to the Fiscal Summary prepared by Legislative Council Staff, #21 would reduce property tax revenue by at least \$2.2 billion in 2024

and at least \$2.9 billion in 2025. *See* Record, p 12. The \$100 million offset authorizes the state to replace a small portion of that lost revenue (around 5%) from state monies that would otherwise be refunded to taxpayers. *Id.* at 13. Petitioner has thus failed to show that, under current economic projections and current law, section 2 of #21 would not offset revenue lost due to the property tax cap. Second, as noted above, the language of the measure itself makes clear that the purpose of the offset is related to the property tax cap. *Id.* at 2. That Petitioner can hypothesize possible future scenarios where the offset does not operate precisely as intended because of changed legislative or economic conditions does not affect the single-subject analysis.

Finally, Petitioner’s concern about logrolling here is misplaced. Voters worried about adequate funding for fire protection are not likely to vote for a nearly \$3 billion tax reduction while hoping to backfill some of those losses through a partial offset. In fact, the use of the word “offset” in both #21 and in the title ameliorates any logrolling concern here. By labeling it as an offset (over Petitioner’s objection), the title

makes clear to voters that the measure is designed to minimize some of the impacts of the tax cap, not to establish a new funding source as Petitioner claims.

II. The Title Board stands on its clear title arguments from its opening brief.

The Board rests on the arguments in its opening brief as to how the title set here was well within the Board’s discretion. *See* Title Bd.’s Op. Br. 11-14; *see also In re Title, Ballot Title, & Submission Clause for 1999-2000 #256*, 12 P.3d 246, 255 (Colo. 2000) (“In reviewing the actions of the Board, we grant great deference to the board’s broad discretion in the exercise of its drafting authority.”) (quotation omitted).

CONCLUSION

The Court should affirm the Title Board’s single subject finding and the title it set for 2023-2024 #21.

Respectfully submitted on this 10th day of May, 2023.

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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 10th day of May, 2023, addressed as follows:

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