DATE FILED: June 14, 2023 2:30 PM

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 #30

Petitioner: Christine M. Donner,

v.

Respondents: Steven Ward and Suzanne Taheri,

and

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

▲ **COURT USE ONLY** ▲

Case No. 2023SA119

PHILIP J. WEISER, Attorney General
MICHAEL KOTLARCZYK, 43250
Senior Assistant Attorney General*
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, CO 80203
Telephone: (720) 508-6187
E-Mail: mike.kotlarczyk@coag.gov
*Counsel of Record
Attorneys for the Title Board

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 1,423 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/ Michael Kotlarczyk
MICHAEL KOTLARCZYK, #43250
Senior Assistant Attorney General

TABLE OF CONTENTS

ARGUMENT 1

- I. Petitioner's single subject arguments fail. 1
  - A. 2023-2024 #30 does not contain multiple subjects. 1
  - B. The measure is clear enough for a title to be set. 2
- II. The title set by the Title Board is within the Board's discretion. 5
  - A. "Crimes of violence" is not a catchphrase. 5
  - B. The phrase "not just those enumerated in this measure" is not unclear or confusing. 6
  - C. Petitioner waived any objection to the term "any" as it appears in the title. 7

CONCLUSION 8

TABLE OF AUTHORITIES

Page(s)

Cases

In re Proposed Ballot Initiative on Parental Rights,
913 P.2d 1127 (Colo. 1996) 7

In re Title, Ballot Title, & Submission Clause for 1997-1998 #75,
960 P.2d 672 (Colo. 1998) 2

In re Title, Ballot Title, & Submission Clause for 1999-2000 #25,
974 P.2d 458 (Colo. 1999) 3

In re Title, Ballot Title, & Submission Clause for 2007-2008 #61,
184 P.3d 747 (Colo. 2008) 2

In re Title, Ballot Title, & Submission Clause for 2009-2010 #45,
234 P.3d 642 (Colo. 2010) 5

In re Title, Ballot Title, & Submission Clause for 2013-2014 #89,
2014 CO 66 6

In re Title, Ballot Title, & Submission Clause for 2013-2014 #90,
2014 CO 63 7

In re Title, Ballot Title, & Submission Clause for 2015-2016 #63,
2016 CO 34 5

Statutes

§ 1-40-106(3)(b), C.R.S 7

§ 24-10-106.3, C.R.S. 4

1987 Colo. Sess. Laws 650 1

ARGUMENT

I. Petitioner's single subject arguments fail.

A. 2023-2024 #30 does not contain multiple subjects.

Petitioner first argues that because #30 repeals and reenacts an existing statute that contains multiple subjects. *See* Petr's Opening Br. 8-9. But the current statute was passed in 1987 largely in its current form, containing both the Governor's parole authority and the overall limitation on parole for violent offenders. *See* 1987 Colo. Sess. Laws 650, 655. And the 1987 Act also covered other areas related to parole, such as expanding the membership of the parole board and changing certain procedural elements of parole revocation proceedings. The repeal and reenactment of just one section of this 1987 legislation does not create any single subject problem.

As currently written and in #30, the statute restricts parole eligibility for certain violent offenders and creates a release valve in the event "extraordinary mitigating circumstances" justify the Governor granting parole in favor of such offenders. These provisions collectively support one purpose: tightening parole eligibility for certain violent

offenders. Petitioner argues that the Governor's parole authority works at cross-purposes with the overall tightening of parole eligibility. In fact, the parole provision is a limitation on that tightening and does not create a second subject. *See In re Title, Ballot Title, & Submission Clause for 2007-2008 #61*, 184 P.3d 747, 750 (Colo. 2008) ("[T]he inherent tension caused by implicitly subjecting a provision to a limitation does not violate the single subject requirement.").

B. The measure is clear enough for a title to be set.

Petitioner argues that "[n]o title can be set for an initiative where the Board [does] not know *exactly* what the initiative addresses." Petr's Opening Br. 11 (emphasis added). But that's not right. The Board can set a title even when a measure contains terms whose "definition must await future legislative and judicial construction and interpretation." *In re Title, Ballot Title, & Submission Clause for 1997-1998 #75*, 960 P.2d 672, 673 (Colo. 1998). As argued in the Board's opening brief, courts may need to clarify the precise contours of what constitutes a "crime of

violence," as courts have previously done. *See* Title Bd. Opening Br. 7-8. But such judicial construction does not make #30 incomprehensible.

Petitioner's reliance on *In re Title, Ballot Title, & Submission Clause for 1999-2000 #25* is misplaced. The Court there did not require precise delineation of every term in the proposed initiative. Rather, the Court applied the well-established principle that "if the Board cannot comprehend a proposed initiative sufficiently to state its single subject clearly in the title, it necessarily follows that the initiative cannot be forwarded to the voters." 974 P.2d 458, 465 (Colo. 1999). Because the Board in 1999-2000 #25 failed to "reach a definitive conclusion as to whether the initiatives encompass multiple subjects," the Board failed in its statutory duty to only set a title for matters that contain a single subject. *Id.* at 468-69.

By contrast, the Board here had no trouble understanding what the single subject of #30 is. The Board did express uncertainty as to which definition of crimes of violence might apply if the initiative is enacted, but as argued above, such ambiguity is not fatal. Additionally,

any ambiguity is present in current law and not introduced by #30. Nor are the differences between the various statutory definitions of "crime of violence" significant.[1] As Petitioner demonstrates, the statutes don't differ all that much, mainly over minor matters such as whether only aggravated robbery is included or only first-degree burglary. Petr's Opening Br. 15. These distinctions matter to a defendant seeking parole who has previously committed these crimes, but Petitioner does not argue that these distinctions would matter to a voter. Therefore, because the Board understood the measure sufficiently to identify the single subject, #30 is not so unclear as to make it impossible to set a title.

[1] The Claire Davis School Safety Act, § 24-10-106.3, does contain a fundamentally different definition of "crime of violence," but Petitioner does not seriously argue that a reviewing court would apply a definition from that highly specialized statute in title 24 to a parole eligibility statute in title 17.

II. The title set by the Title Board is within the Board's discretion.

A. "Crimes of violence" is not a catchphrase.

As the Title Board argued in its opening brief, the phrase "crimes of violence" is descriptive and contributes to voter understanding. Title Board Opening Br. 11-12. The phrase describes a category of offenses—violent crimes—and does so with the term of art—"crimes of violence"—that is found both in current law and in #30. It is therefore not a phrase "that work[s] in favor of a proposal without contributing to voter understanding," and so is not an impermissible catchphrase. *In re Title, Ballot Title, & Submission Clause for 2015-2016 #63*, 2016 CO 34, ¶ 24.

Petitioner also cites survey data to support her argument that "crimes of violence" is a catchphrase. Petr's Op. Br. 26-27. This data is simply irrelevant to the Court's determination of whether the phrase is a catchphrase. *In re Title, Ballot Title, & Submission Clause for 2009-2010 #45*, 234 P.3d 642, 650 (Colo. 2010) ("The standard cannot be that a phrase becomes a catch phrase if the petitioner proves that it polls with the public better than other phrases."). When considering a title

for an environmental initiative, this Court held that "although the environment and conservation are common topics of debate, the words used in the initiative do not constitute a catch phrase because they form a descriptive phrase that contributes to voter understanding of the purpose of the initiative." *In re Title, Ballot Title, & Submission Clause for 2013-2014 #89*, 2014 CO 66, ¶ 26. The same is true here—however "crimes of violence" is used in public debate, its use in the title enhances voter understanding of #30 and is properly included in the title.

B. The phrase "not just those enumerated in this measure" is not unclear or confusing.

The title's use of the phrase "not just those enumerated in this measure" eliminated, rather than introduced, a possible source of voter confusion. Title Board Opening Br. 13-14. Petitioner objects that this phrase only tells voters what is not included rather than what is. But Petitioner's implied alternative is unreasonable, as listing every covered crime of violence would make the title unreadable to voters. Petitioner's own brief takes up almost two pages just listing different statutory definitions of "crimes of violence." Petr's Opening Br. 12-14. Such an

approach in the title would violate the requirement that "[b]allot titles shall be brief." § 1-40-106(3)(b), C.R.S. (2022). At a minimum, the Board's decision not to list all crimes of violence falls within its "discretion [to] resolv[e] interrelated problems of length, complexity, and clarity in setting a title." *In re Title, Ballot Title, & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 24.

C. Petitioner waived any objection to the term "any" as it appears in the title.

As argued in the Title Board's opening brief, Petitioner did not preserve an objection to the title's use of the word "any." In her opening brief, Petitioner argues that she did preserve the argument because her motion for rehearing objected to the phrase "any such crime" in the title. Petr's Opening Br. 18. But her argument to this Court is to a different phrase: "any crime of violence." *See id.* Her objection to this phrase (which was added at the rehearing) was not made to the Board either in writing or orally. Therefore, it is waived. *See, e.g.*, *In re Proposed Ballot Initiative on Parental Rights*, 913 P.2d 1127, 1130 n.3 (Colo. 1996).

Even if it was not waived, the phrase “any crime of violence” does not render the title inaccurate, as Petitioner argues. Petitioner effectively restates her argument that “crime of violence” could include some different crimes based on different statutes’ definitions of the phrase, so the phrase is unclear and the word “any” is inaccurate because some of the crimes in some of the statutes may not be covered. But this is unpersuasive. Whichever statute’s definition of “crime of violence” applies to #30, it will apply to all crimes of violence that meet that definition. The title does not need to specify which sections of Title 16 or Title 18 are specifically incorporated (or not) to accurately convey the measure’s key features. Therefore, even if Petitioner’s argument was preserved, it does not warrant reversing the titles set by the Board.

CONCLUSION

The Court should affirm the Title Board’s actions.

Respectfully submitted on this 14th day of June, 2023.

PHILIP J. WEISER
Attorney General

/s/ Michael Kotlarczyk

MICHAEL KOTLARCZYK, 43250*
Senior Assistant Attorney General
Public Officials Unit
State Services Section
Attorneys for the Title Board
*Counsel of Record

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 14th day of June, 2023, addressed as follows:

Nathan Bruggeman
Mark G. Grueskin
Recht Kornfeld, P.C.
1600 Stout Street, Suite 1400
Denver, CO 80202
nate@rklawpc.com
mark@rklawpc.com
Attorneys for Petitioner

Suzanne M. Taheri
West Group Law & Policy
6501 E. Belleview Ave., Suite 375
Englewood, CO 80111
st@westglp.com
Attorney for Respondents

/s/ Carmen Van Pelt