

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 #197

Petitioners: Linda Good f/k/a Linda
Bissett

v.

Respondents: Jason Bertolacci and Owen
Alexander Clough,

and

Title Board: Theresa Conley, Christy
Chase, and Jennifer Sullivan.

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Case No. 2024SA93

THE TITLE BOARD'S OPENING 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 2,138 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/ Sam Wolter

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ISSUE ON REVIEW

Whether 2023-2024 #197 contains a single subject.

STATEMENT OF THE CASE

Proposed Initiative 2023-2024 #197 seeks to change the process used to fill a vacancy in the Colorado legislature upon the death or resignation of a member. Specifically, the Initiative seeks to replace the existing method of filling the vacancy—appointment by a political party vacancy committee—with a vacancy election. Upon the event of a vacancy, Initiative #197 requires the Governor to hold an election to fill the vacancy as soon as practicable. *See* Record, p 2, filed March 27, 2024. Such an election would be held in the district for the vacant seat and be conducted using a ranked voting method. *Id.* Ranked voting method is defined in C.R.S. § 1-1-104(34.4) (2024) as “a method of casting and tabulating votes that allows electors to rank the candidates for an office in order of preference and uses these preferences to determine the winner of the election.” The Initiative would apply to elections held on or after official declaration of the vote by proclamation

of the Governor or thirty days after the vote is canvassed, whichever is earlier. *Id.* at 4.

The Title Board set a title on the measure at its March 6, 2024 hearing. *Id.* at 5. Petitioner Linda Good then filed a timely motion for rehearing under C.R.S. § 1-40-107. *Id.* at 7. Petitioner Good argued in her motion that the Initiative contained multiple subjects. *Id.*

The Board held the rehearing on March 20, 2024. *Id.* at 6. Petitioner Good made a brief statement, reiterating her contention that the Initiative contained multiple subjects. *Hearing Before Title Board on Proposed Initiative 2023-2024 #197* (Mar. 20, 2024), (<https://tinyurl.com/8b6mvd5>) (“Hearing”) at 19:15. Counsel for Proponents also offered brief remarks, stating that the only subject of Initiative #197 is instituting vacancy elections instead of appointments. *Id.* at 20:05. After these statements, the Board unanimously denied the motion for rehearing in its entirety. Record, p 6. The title is set as follows:

A change to the Colorado Revised Statutes concerning filling a vacancy in the Colorado legislature through a vacancy election instead of a political party vacancy committee appointment, and, in connection therewith, requiring the vacancy election to be held

as soon as possible after the vacancy has occurred or during a November even-year election and to be conducted by ranked voting; requiring that the candidates for the vacant position be members of the same political party as the vacating legislator and allowing any eligible voter to participate in the vacancy election; and requiring the Colorado secretary of state to develop rules on how candidates petition onto the vacancy election ballot.

Id. Petitioner Good filed a timely appeal to this Court.

SUMMARY OF THE ARGUMENT

Petitioner Good objects to the Title Board's setting title for Initiative #197 on single subject grounds. She argues that Initiative #197 contains multiple subjects because it changes the current method of filling vacancies in the Colorado legislature and changes the conduct of electing Colorado legislators. *See* Petition, p 3, filed Mar. 27, 2024. But the election procedure in the Initiative is not a subject unto itself. Instead, this procedure is simply an implementation detail of how vacancies in the legislature are filled and is thus part of that single subject.

Next, Petitioner Good argues that Initiative #197 violates C.R.S. § 1-40-106.5(e)(II) because voters may be surprised by the ranked voting method. *Id.* at 4. However, Initiative #197 does not present the sort of

deceptive titling that § 1-40-106.5(e)(II) seeks to prevent, as it does not hide any details of the measure. To the contrary, the plain text of the Initiative clearly states that vacancies in the legislature will be filled via ranked choice method election.

ARGUMENT

I. The proposed initiative contains a single subject.

A. Standard of review and preservation.

The Title Board has jurisdiction to set a title only when a measure contains a single subject. *See* Colo. Const. art. V, § 1(5.5). The Court will “overturn the Board’s finding that an initiative contains a single subject only in a clear case.” *In re Title, Ballot Title, & Submission Clause for 2021-2022 #16*, 2021 CO 55, ¶ 9 (quotations omitted). “In reviewing a challenge to the Title Board’s single subject determination, [the Supreme Court] employ[s] all legitimate presumptions in favor of the Title Board’s actions.” *In re Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 2014 CO 52, ¶ 8. In doing so, the Court does “not address the merits of the proposed initiative” or “suggest how it might be applied if enacted.” *In re Title, Ballot Title, & Submission Clause for*

2019-2020 #3, 2019 CO 57, ¶ 8. Nor can the Court “determine the initiative’s efficacy, construction, or future application.” *In re 2013-2014 #76*, 2014 CO 52, ¶ 8. Instead, the Court “must examine the initiative’s wording to determine whether it comports with the constitutional single-subject requirement.” *In re 2019-2020 #3*, 2019 CO 57, ¶ 8. To satisfy the single-subject requirement, the “subject matter of an initiative must be necessarily and properly connected rather than disconnected or incongruous.” *In re 2013-2014 #76*, 2014 CO 52, ¶ 8.

The Title Board agrees that Petitioner Good raised a single subject objection in her motion for rehearing and that this issue is preserved. Record, p 7. It is unclear from her petition whether Petitioner Good’s § 1-40-106.5 argument is also intended to challenge the title itself. *See* Petition, p 4. To the extent that Petitioner Good advances any clear title arguments, those arguments were not raised in her motion for rehearing or in her statement before the Title Board. Accordingly, any clear title objections are waived.

B. The measure satisfies single subject and the reference to rank voting method is not “a subject unto itself.”

The single subject of 2023-2024 #197 is replacing the appointment method of filling vacant seats in the Colorado legislature with a vacancy election method. The provision specifying that such vacancy elections are to be conducted using the ranked voting method does not create a second subject. “[E]xamin[ing] the initiative’s wording to determine whether it comports with the constitutional single-subject requirement” makes clear that the ranked voting provision is directly tied to the newly created vacancy elections that would replace the vacancy appointment method. *In re 2019-2020 #3*, 2019 CO 57, ¶ 8. The initiative states that a vacancy election is “to be conducted by ranked voting” and requires the “vacancy election to be held as soon as possible after the vacancy has occurred,” which is the primary focus of the measure. Record, p 6. The ranked voting method is thus “necessarily and properly connected” to the new practice of conducting vacancy elections “rather than disconnected or incongruous.” *In re 2013-2014 #76*, 2014 CO 52, ¶ 8.

Petitioner Good objects that the ranked voting provision marks a departure from the common practice of using a plurality voting system, and therefore must be “a subject unto itself.” Petition, p 3. However, the ranked voting provision is an implementation detail, not a separate subject, because it describes the mechanism that will carry out the initiative’s single subject of establishing vacancy elections. And implementation details “that are directly tied to the initiative’s central focus do not constitute a separate subject.” *In re 2021-2022 #16*, 2021 CO 55, ¶ 29 (quotations omitted). The ranked voting provision is directly tied to #179’s central purpose of replacing the appointment method of filling legislative vacancies with a vacancy election; replacing the appointment method with a vacancy election logically must also entail specifying how such a vacancy election is conducted. Such specifications are clearly “implementation details that are directly tied to the initiative’s focus” and do not constitute a separate subject. *Id.* (quotations omitted).

Petitioner Good also incorrectly asserts that the Initiative contains multiple subjects because it would change the conduct of

elections “as is currently prescribed in” Article IV, § 3 of the Colorado Constitution. Petition, p 3. However, Article IV only covers the Executive Department, not the Legislative Department. The provision quoted by Petitioner Good applies to “State Officers,” which includes only the governor, lieutenant governor, secretary of state, and attorney general. *See* Colo. Const. art. IV, §§ 1, 3. The Constitution does not similarly prescribe the conduct of elections for the Legislative Department. *See* Colo. Const. art. V, § 2. The Initiative thus does not change conduct prescribed by the Constitution as Petitioner Good claims and contains only one subject.

Finally, the two purposes of the single-subject rule are satisfied by #197. First, the single-subject rule seeks to avoid “log rolling,” where the measure attempts to obtain support from various separate factions by combining unrelated subjects in a single matter. *See In re 2013-2014 #76*, 2014 CO 52, ¶ 32. Initiative #197 does not combine unrelated subjects into a single matter. The central focus of the measure is establishing vacancy elections to fill vacancies in the legislature, and the conduct of such elections is directly related to that subject. In *In re*

Title, Ballot Title, & Submission Clause for 2009-2010 #91, the challenged initiative would have created a new beverage tax and also prohibited the General Assembly from exercising its legislative authority over basin roundtables and the interbasin compact committee. 235 P.3d 1071, 1076 (Colo. 2010). There, the Court found that combining such disparate measures “[set] up the kind of log rolling that the voters intended to prevent when adopting in 1994 the single-subject constitutional requirement.” *Id.* at 1079. Initiative #197, in contrast, concerns only the single subject of replacing vacancy appointments with vacancy elections while providing the implementation details for how such elections will be conducted.

Second, the measure does not contain hidden aspects “coiled up in the folds of a complex proposal.” *See In re 2013-2014 #76*, 2014 CO 52, ¶ 32. On a single page, #197 straightforwardly replaces the appointment method of filling a vacancy in the general assembly with vacancy elections and details how those elections will be conducted. Voter confusion is not a serious risk with #197.

C. Setting titles for #197 does not violate § 1-40-106.5(e)(II).

Petitioner Good also argues that Initiative #197 violates § 1-40-106.5(e)(II), which codifies the general assembly’s interpretation of Article V, § 1(5.5) of the Colorado Constitution. § 1-40-106.5(e)(II) describes the intent of Article V, § 1(5.5) as to “prevent surreptitious measures and apprise the people of the subject of each measure by the title, that is, to prevent surprise and fraud from being practiced upon voters.”

§ 1-40-106.5(e)(II) reflects a concern that “voters would not expect that passing [an] initiative would lead to one or more of the initiative’s outcomes.” *In re Title, Ballot Title, & Submission Clause for 2013-2014 #89*, 2014 CO 66 ¶ 19. (citation omitted). In rejecting a past § 1-40-106.5 objection, the Court determined that based on the plain language of the challenged initiative, the fact that all the sections related to the same subject, and the proposal’s short length, “there is no serious risk that the voters will be unaware of the primary effects” of the initiative. *Id.* Initiative #197 similarly does not present a risk of surprising voters. Each section relates to the same subject: replacing vacancy

appointments with ranked choice elections. The plain language of the Title specifies that ranked choice elections shall replace the appointment method of filling vacancies. The Title is not particularly lengthy or complex, and it does not hide any outcomes of the initiative. Accordingly, Initiative #197 does not violate § 1-40-106.5.

Finally, Petitioner Good also claims that Initiative #197 violates §1-40-106.5(e)(II) because voter surprise may occur without “an explanation of the drastic changes ranked voting method would entail.” Petition, p 4. This argument fails for two reasons. First, Petitioner Good’s assertion that ranked voting would entail drastic changes for Colorado voters is mere conjecture. And regardless, the “effects [a] measure could have on Colorado...law if adopted by voters are irrelevant” to the single subject inquiry. *In re Title, Ballot Title & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 17 (quoting *In re Title, Ballot Title, & Submission Clause for 2011-2012 #3*, 2012 CO 25, ¶ 20 n.2). Second, “[i]t is well-established that the titles and summary need not spell out every detail of a proposed initiative in order to convey its meaning accurately and fairly.” *In re Title, Ballot Title &*

Submission Clause, & Summary Clause for 1997-1998 No. 74, 962 P.2d 927, 930 (Colo. 1998) (citing In re Initiative Statute Proposed by Arthur Apple & James Meeker (1996-17), 920 P.2d 798, 803 (Colo. 1996)).

Initiative #197 therefore does not violate §1-40-106.5(e)(II) merely because it does not spell out every detail of the ranked voting method.

CONCLUSION

The Title Board correctly determined that #197 contains a single subject and set an appropriate title. The Court should therefore affirm the title set by the Title Board on 2023-2024 #197.

Respectfully submitted on this 10th 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 OPENING BRIEF** upon the following parties electronically via CCEF, at Denver, Colorado, this 10th day of April, 2024, addressed as follows:

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