

COLORADO SUPREME COURT

2 East 14th Avenue
Denver, CO 80203

Original Proceeding
Pursuant to Colo. Rev. Stat. § 1-40-107(2)
Appeal from the Ballot Title Setting Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative
2023-2024 #283 (“Government Fees”)

Petitioner:

Norma B. Akright

v.

Respondents:

Michele Haedrich and Steven Ward,
and
Title Board: Theresa Conley, Jason
Gelender, and Kurt Morrison

▲ COURT USE ONLY ▲

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Case Number: 24SA137

**RESPONDENTS MICHELE HAEDRICH AND STEVEN WARD’S
OPENING BRIEF**

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 1,844 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

For each issue raised by the appellant, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

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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ISSUES ON REVIEW

1. Whether the Board correctly found that Proposed Initiative 2023-2024 #283 (“Initiative #283”) is a single subject.
2. Whether the title set by the Board properly describes the purpose and effects of the measure.

STATEMENT OF THE CASE

Initiative #283 is a constitutional measure that adds a definition of “fee” to Article X, Section 20 of the Colorado Constitution. The text of the measure is short. It adds 40 words to the Colorado Constitution. Additionally, Section 2 of the measure specifies that the new definition applies to fees enacted or increased after the effective date of the measure.

The Title Board met on April 17, 2023, found that the measure constitutes a single subject, and proceeded to set a ballot title. Petitioner filed a Motion for Rehearing, and a rehearing was conducted on April 25, 2024. At the rehearing, the Board made modifications to the original title that was set but denied Petitioner’s single subject complaint. The ballot title set by the Board is as follows:

“An amendment to the Colorado constitution limiting new or increased fees, and, in connection therewith, defining a “fee”, which does not require voter approval, as opposed to a tax, which does require voter approval, as a governmental charge voluntarily paid in exchange for specific benefit provided to the payer in an amount that should

reasonably approximate the payer's share of the costs incurred by the government in providing the benefit.”

Petitioner now challenges both the Title Board's single subject determination and the title as set by the Board.

SUMMARY OF THE ARGUMENT

The definition of “fee” in Proposed Initiative 2023-2024 #283 is taken verbatim from a definition that was previously proposed in the 2013-2014 initiative cycle. In *Milo v. Coulter (In re Title, Ballot Title & Submission Clause for 2013-2014 #129)*, 333 P.3d 101 (Colo. 2014), the Court determined that Proposed Initiative 2013-2014 #129 constituted a single subject. The Proponents of Initiative #283 drafted it with this language specifically because the Court has already heard and ruled against a single subject challenge on this language. Initiative #283 is a single subject.

The Title as set by the Board expresses the true meaning of the initiative. The ballot title informs voters what the new definition of fee is and how a fee is different from a tax.

ARGUMENT

I. Initiative #283 Meets the Single Subject Requirement

A. Standard of Review

The Court’s role in reviewing Title Board actions is limited, and it must “employ all legitimate presumptions in favor of the propriety of the Title Board’s actions and ...overturn its finding that an initiative contains a single subject only in a clear case.” *Milo v. Coulter (In re Title, Ballot Title & Submission Clause for 2013-2014 #129)*, 333 P.3d 101, 103-04 (Colo. 2014); citing *Kemper v. Hamilton (In re Title, Ballot Title & Submission Clause for 2011-2012 #3)*, 274 P.3d 562, 565 (Colo. 2012); *Earnest v. Gorman (In re Title, Ballot Title & Submission Clause for 2009-2010 #45)*, 234 P.3d 642, 645 (Colo. 2010). The Court must “also liberally construe the single subject requirement to ‘avoid unduly restricting the initiative process.’” *Id.*, quoting *Hayes v. Lidley (In re Title, Ballot Title and Submission Clause for 2009-2010 #24)*, 218 P.3d 350, 353 (Colo. 2009).

B. Provisions Must be Related to One Object or Purpose

The Colorado Constitution requires a measure proposed by petition to contain only one subject. Colo. Const. art. V, § 1(5.5). “To run afoul of the single-subject requirement, the proposed initiative must have at least two distinct and

separate purposes that are not dependent upon or connected with each other.”

Earnest, 234 P.3d at 645, citing *Hayes*, 218 P.3d at 352.

“[A] proposed measure that ‘tends to effect or to carry out one general objective or purpose presents only one subject.’” *Herpin v. Head (In re Title, Ballot Title & Submission Clause)*, 4 P.3d 485, 495 (Colo. 2000); citing *Title v. Bruce (In re Title, Ballot Title & Submission Clause for 1999-2000 # 25)*, 974 P.2d 458, 463 (Colo. 1999).

The single subject of Initiative #283 is to provide a definition of “fee” included in Colo. Const. Article X, Section 20 (“TABOR”). The initiative adds a definition of fee to mean “a voluntarily incurred governmental charge in exchange for a specific benefit conferred on the payer, which fee should reasonably approximate the payer’s fair share of the incurred by the government in providing said specific benefit.”

In *Coulter*, the language defining “fee” was identical. *Id.*, at 103. *Coulter*’s application was broader than Initiative #283, including provisions that applied the definition throughout the statutes, codes, directions, and public documents. *Id.* *Coulter* additionally had provisions that barred the application of ancillary terms defined by Black’s Law Dictionary and specifically superseded conflicting Supreme Court findings. *Id.*

The provision of Initiative #283 carries out this single purpose, and there is no separate purpose not dependent upon or connected to the purpose of defining “fee”. While this is a change in Colorado law that may have impacts, as discussed in *Coulter*, the court cannot consider the effects the measure could have on Colorado law. *Id.*, p. 105.

C. Initiative #283 Does Not Implicate Dangers to be Prevented by Single Subject Requirement

The purpose of the single-subject requirement for proposed voter initiatives is to prevent two “dangers” of multi-subject initiatives: first, it prevents the enactment of combined measures that would fail on their individual merits; second, it protects against fraud and surprise occasioned by the inadvertent passage of a surreptitious provision coiled up in the folds of a complex initiative. Colo. Const. art. V, § 1(5.5); Colo. Rev. Stat. Ann. § 1-40-106.5.

The Title Board considered whether Initiative #283 posed the danger of voter surprise due to the potential impacts, such as application of the definition. However, the Court’s “limited role in this process prohibits ... addressing the merits of a proposed initiative or suggesting how an initiative might be applied if enacted.” *Milo*, 333 P.3d 101, 104; citing *In re Title v. Respondents: Dennis Polhill & Douglas Campbell, Proponents, & Title (In re Title, Ballot Title &*

Submission Clause for Proposed Initiative 2001-2002 #43), 46 P.3d 438, 443 (Colo. 2002). “In determining whether a proposed measure contains more than one subject, [the Court] may not interpret its language or predict its application if it is adopted. *Herpin*, 4 P.3d 485, 495 (Colo. 2000); citing *Aisenberg v. Campbell (In re Title, Ballot Title & Submission Clause for Proposed Initiative 1997-98 # 64)*, 960 P.2d 1192, 1197 (Colo. 1998); cf. *In re Branch Banking Initiative*, 612 P.2d 96, 99 (Colo. 1980). Concerns about the effects of an initiative, valid or not, are irrelevant to whether the proposed initiative contains a single subject. *Milo*, 333 P.3d at 105, citing *Kemper*, 274 P.3d at 568 n.2. Therefore, how Initiative #283 might be affected by case law or interact with other state requirements is not relevant to the single subject determination.

Initiative #283 itself is brief and direct, not “complex” nor “omnibus,” and there is no hidden or concealed provision that would cause voter surprise. *Earnest*, 234 P.3d at 647.

Initiative #283 unambiguously provides a definition of “fee”. It contains no surreptitious provision that would surprise voters.

II. The Title Clearly and Accurately Describes the Central Features

A. Standard of Review

The Court grants “great deference to the board's broad discretion in the exercise of its drafting authority.” *Herpin*, 4 P.3d at 496; citing *Kelley v. Tancredo (In re Proposed Ballot Initiative on Parental Rights)*, 913 P.2d 1127, 1131 (Colo. 1996) and *In re Proposed Initiative Concerning "State Personnel Sys."*, 691 P.2d 1121, 1125 (Colo. 1984)). When reviewing a title for clarity and accuracy, the Court will only reverse the Title Board's decision if the title is "clearly misleading." *Herpin*, 4 P.3d at 496; citing *In re "State Personnel Sys."*, 691 P.2d at 1125.

B. The Title Clearly, Accurately and Fairly Describes Initiative #283

Colorado statute sets forth a clear-title standard requiring the Title Board to "consider the public confusion that might be caused by misleading titles" and to "avoid titles for which the general understanding of the effect of a 'yes' or 'no' vote will be unclear." Colo. Rev. Stat. Ann. § 1-40-106(3)(b). Titles should "enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal." *Earnest*, 234 P.3d at 648, citing *Hayes*, 218 P.3d at 356 and *In re Title, Ballot Title & Submission Clause for Proposed Initiative on Parental Notification of Abortions*

for Minors, 794 P.2d 238, 242 (Colo. 1990)). A title need not be “the best possible statement of the proposed measure's intent.” *Herpin*, 4 P.3d at 496 (Colo. 2000), citing *In re Mineral Prod. Tax Initiative*, 644 P.2d 20, 25 (Colo. 1982). Rather, the Court reviews “titles set by the Title Board with great deference, and will only reverse the Board's decision if the titles are insufficient, unfair, or misleading.” *In re Title, Ballot Title & Submission Clause, & Summary for 2005-2006 # 73*, 135 P.3d 736, 740 (Colo. 2006), citing *In re Ballot Title for 1999-2000 # 256*, 12 P.3d 246, 254 (Colo. 2000).

Furthermore, titles “are intended to alert the electorate to the salient characteristics of the proposed measure... [not] to address every conceivable hypothetical effect the Initiative may have if adopted by the electorate.” *Herpin*, 4 P.3d at 497; citing *In re Proposed Initiative Concerning Tax Reform*, 797 P.2d 1283, 1289 (Colo. 1990).

In *Coulter*, the title was set as follows:

“Shall there be an amendment to the Colorado constitution defining a “fee” as a voluntarily incurred governmental charge in exchange for a specific benefit conferred on the payer, which fee should reasonable approximate the payer’s fair share of the costs incurred by the government in providing the benefit.” *Id.*, p.106.

The Court found the language conveyed the singular purpose of providing a definition of “fee” even though the title did not list the context in which the definition may apply. *Id.*

For purposes of a voter determining whether to vote "yes" or "no," the Title for Initiative #283 clearly provides states the new definition. The title also adds to the title from *Coulter* by providing the context of the change by distinguishing between a fee and a tax. It is not likely to mislead voters as to the initiative's purpose or effect, or conceal a hidden intent. *See Earnest*, 234 P.3d at 648-49; citing *Hayes*, 218 P.3d at 356. Any further hypothetical effects need not be address in the Title.

This Title clearly, accurately, and fairly describes Initiative #283 and would not be misleading to voters.

CONCLUSION

Proposed Initiative #283 is a single subject, and the ballot title set by the Board properly informs the voters of the measure’s contents. Proponents of Initiative #283 chose the definition they did because that definition has previously been evaluated by the Supreme Court and determined to constitute a single subject.

The ballot title set by the Title Board is legally sufficient, and the Court should uphold the Title Board’s actions regarding Initiative #283.

Respectfully submitted this 9th day of May, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of May, 2024, a true and correct copy of the **RESPONDENTS MICHELE HAEDRICH AND STEVEN WARD'S OPENING BRIEF** was served via the Colorado Court's E-Filing System to the following:

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