

COLORADO SUPREME COURT

2 East 14th Avenue
Denver, CO 80203

Original Proceeding

Pursuant to Colo. Rev. Stat. § 1-40-107(2)

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

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Case No. 2024SA137

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 687 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).

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.

s/ Torrey Samson

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TABLE OF CONTENTS

PAGE

ARGUMENT 1

 I. The proposed initiative contains a single subject. 1

 II. Petitioner’s clear title arguments are unavailing. 3

CONCLUSION 4

TABLE OF AUTHORITIES

PAGE

CASES

<i>In re Title, Ballot Title & Submission Clause for 2009-2010 #45, 234 P.3d 642 (Colo. 2010)</i>	1
<i>In re Title, Ballot Title & Submission Clause for 2011-2012 #3, 2012 CO 25</i>	1
<i>In re Title, Ballot Title & Submission Clause for 2013–2014 #90, 2014 CO 63</i>	2, 3
<i>In re Title, Ballot Title & Submission Clause of 2017-2018 #4, 2017 CO 57</i>	2
<i>In re Title, Ballot Title and Submission Clause for Proposed Initiative 2013-2014 #129, 2014 CO 53</i>	2
<i>In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 #255, 4 P.3d 485 (Colo. 2000)</i>	4
<i>In re Title, Ballot Title, & Submission Clause for 2019-2020 #3, 2019 CO 57</i>	4

ARGUMENT

I. The proposed initiative contains a single subject.

In changing the definition of “fee” for purposes of the Taxpayer’s Bill of Rights (“TABOR”), Proposed Initiative #283 (“#283”) will impact what constitutes a fee or a tax for a wide range of governmental charges. But application to a broad range of governmental charges does not create a second subject. “An initiative that tends to carry out one general, broad objective or purpose does not violate” the single subject rule. *In re Title, Ballot Title & Submission Clause for 2009-2010 #45*, 234 P.3d 642, 646 (Colo. 2010). Instead, a proposed initiative only violates the single subject requirement if it has “at least two distinct and separate purposes not dependent upon or connected with each other.” *In re Title, Ballot Title & Submission Clause for 2011-2012 #3*, 2012 CO 25, ¶ 9.

And #283 only carries out one objective: modifying the definition of “fee” for purposes of TABOR. The necessary downstream impacts of

this change are neither “distinct” nor “separate” enough to trigger single subject concerns. *See id.*

This Court has previously held that a nearly identical proposed initiative does not constitute a second subject in *In re Title, Ballot Title and Submission Clause for Proposed Initiative 2013-2014 #129*, 2014 CO 53. Petitioner Akright asserts this case is distinguishable because the 2014 petitioner failed to raise concrete concerns. Petr’s Br., p 17. But, as in 2014, Petitioner Akright’s concerns are all impacts that are “necessarily and properly connected to the initiative’s central subject.” *In re Title, Ballot Title & Submission Clause for 2017-2018 #4*, 2017 CO 57, ¶ 11. The policy decision of whether to modify the definition of “fee” does not violate the single subject requirement. *See, e.g., In re 2013–2014 #90*, 2014 CO 63, ¶ 17 (“[T]he effects this measure could have on Colorado law if adopted by voters are irrelevant to our review of whether the proposed initiative and its Titles contain a single subject.”) (cleaned up).

Changing the definition of “fee” and altering what constitutes a fee or a tax under TABOR is a policy choice left to the voters. And although Petitioner Akright disagrees with that policy, such a disagreement is not grounds to deprive the Title Board of jurisdiction. “Whether a proposed initiative is a ‘bad idea’ is not the test of whether it meets the single subject requirement.” *In re Title, Ballot Title & Submission Clause for 2013–2014 #90*, 2014 CO 63, ¶ 21.

II. Petitioner’s clear title arguments are unavailing.

Petitioner first argues that the Title Board set a misleading title by stating the measure is limited to new or increased fees. Petr’s Br., pp 19–24. The Title Board addressed this argument in its opening brief, so rests on its argument in its opening brief that the title is not misleading because it fairly and accurately describes #283. Title Bd. Br., pp 8–10.

Petitioner next argues that the Title Board set a misleading title by explaining that fees are not voted on, while taxes require voters’ approval. According to Petitioner, the measure surreptitiously changes fees into taxes. Petr’s Br., pp 24–27. But this is clearly explained in the

title—that the voters must decide whether to adopt the new definition of fee. While Petitioner may believe that another phrase might better describe the measure, the title is sufficient to “alert the electorate to the salient characteristics of the proposed measure.” *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 #255*, 4 P.3d 485, 497 (Colo. 2000). Even if Petitioner is correct, that would not require reversal, because the Title Board need not “set the best possible title.” *In re Title, Ballot Title, & Submission Clause for 2019-2020 #3*, 2019 CO 57. Instead, Instead, the title set by the Board must only reflect the measure’s “essential concept,” which this title does. *See In re 1999-2000 #255*, 4 P.3d at 497. Petitioner’s bases for the title’s invalidation should be rejected.

CONCLUSION

The Court should therefore affirm the title set by the Title Board on 2023-2024 #283.

Respectfully submitted on this 16th day of May, 2024.

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/s/Torrey Samson

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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 CCES, at Denver, Colorado, this 16th day of May, 2024, addressed as follows:

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