

COLORADO SUPREME COURT

2 East 14th Avenue  
Denver, CO 80203

Original Proceeding Pursuant to  
§ 1-40-107(2), C.R.S. (2023)  
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and  
Submission Clause for Proposed Initiative  
2023-2024 #284 (“Transportation Fees”)

**Petitioner:** Jessica Goad,

v.

**Respondents:** Michele Haedrich and Steven  
Ward,

**and**

**Title Board:** Theresa Conley, Jason Gelender,  
and Kurt Morrison.

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Case No. 2024SA134

**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 1,719 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/ Joe Peters*

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JOE PETERS, #42328

Senior Assistant Attorney General

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## ISSUES ON REVIEW

- I. Whether the Title Board correctly determined that it had jurisdiction to set a title on 2023-2024 #284.
- II. Whether the Title Board set a clear title.

## STATEMENT OF THE CASE

Proposed initiative 2023-2024 #284 would limit fees assessed for the purpose of funding mass transit, allowing only those (1) assessed on transactions within the service area of the mass transportation, and (2) approved by the voters of the state or of the political subdivision in which the fees are collected. *See Record*, p 3, filed May 1, 2024. The initiative would add this limitation to the Colorado Constitution as new Article XVIII, section 17. *Id.*

At its April 17, 2024 meeting, the Title Board concluded that the measure contained a single subject and set a title. *Id.* at 5. Petitioner filed a timely motion for rehearing challenging the Board's jurisdiction as well as the content of the title. *Id.* at 9-12. The proponents also moved for rehearing, challenging a portion of the title. *Id.* at 15. The

Board considered both motions on April 25, 2024. *Id.* at 7; *Hearing Before Title Board on Proposed Initiative 2023-2024 #284* (“*Hearing*”) (Apr. 25, 2024), at 2:11:18 to 3:02:20.<sup>1</sup> The Board unanimously granted the motions only to the extent that it revised the title and otherwise denied the motions. *Record*, p 7.

The title now fixed by the Board for #284 is as follows:

An amendment to the Colorado constitution prohibiting the collection of existing and new fees that fund mass transit unless certain conditions are met, and, in connection therewith, requiring such fees, including fees that fund bus and passenger rail, to be approved by voters of the areas served and collected only in those areas; and excluding fees to fund roads, highways, or bridges from these requirements.

*Id.*

Petitioner challenges “whether the Title Board erred in finding that initiative #284 contains a single subject, and whether the title as set by the Title Board is misleading.” *Petition*, p 3.

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<sup>1</sup> The hearing audio can be found at <https://tinyurl.com/Initiative284>.

## SUMMARY OF ARGUMENT

The Title Board properly set an appropriate title for 2023-2024 #284. The measure contains a single subject: transportation fees. Petitioner’s arguments to the contrary rest solely on the theory that the word “fees” is so ambiguous that its applications might be broader than voters would expect. But this Court’s precedents hold that neither breadth nor ambiguity, on its own, creates a second subject—and all the examples of hidden consequences raised by Petitioner were logically, properly connected to transportation fees.

Similarly, Petitioner finds the title misleading—but provided no argument other than the same breadth-and-ambiguity theory, which the Board has addressed in the title language. Petitioner’s challenges thus fail.

## ARGUMENT

### **I. The Title Board had jurisdiction to set a title.**

#### **A. Standard of review and preservation.**

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 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 conducting its review, 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.

The Title Board agrees that Petitioner preserved a single-subject challenge, arguing that the initiative “contains numerous separate subjects” because the undefined term “fees” could “cover a whole range of different subjects.” *Record*, pp 10-11; *Hearing*, at 2:12:45 to 2:16:05.

**B. A provision that may require interpretation is still a single subject.**

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). “A proposed initiative that tends to effect or carry out one general objective or purpose presents only one subject.” *In re Title, Ballot Title & Submission Clause for 2013-2014 #129*, 2014 CO 53, ¶ 15 (internal marks omitted). Matters are properly included if they are “necessarily and properly connected,” not “disconnected or incongruous.” *Id.* (internal marks omitted). Here, proposed initiative #284 has an operative text of 74 words, imposing two conditions on when “fees assessed for the purpose of funding mass transportation” may be imposed. *Record*, p 3. No other topic, stated or unstated, appears in the measure. The Board properly found it to contain a single subject. *Id.* at 5.

Petitioner disagrees because, she argues, the term “fees” might be construed more broadly than voters would anticipate. *See id.*, pp 10-11; *Hearing*, at 2:13:04. Yet this Court’s precedent is to the contrary. To

begin with, “breadth, by itself, does not necessarily violate the single-subject requirement.” *In re 2013-2014 #129*, 2014 CO 53, ¶ 16. To be a second subject, the term must plausibly sweep within it something incongruous with the first subject—as, for example, when an initiative did not define “non-emergency services” and thus swept within it both “services benefiting the welfare of individuals not lawfully present in Colorado” and “unrelated administrative services that facilitate organization and regulation” throughout state and local government. *In re Title & Ballot Title & Submission Clause for 2005-2006 #55*, 138 P.3d 273, 281-82 (Colo. 2006). Here, by contrast, Petitioner points only to the possibility that “fees” might be defined to include other sources of transportation revenue, like “surcharges, special assessments, fines, and penalties.” *Record*, p 10-11. That’s not a second, unrelated and incongruous subject; that’s an ordinary question of interpretation.

Further, the Court does not “review an initiative for artful drafting,” nor “address the merits of a proposed initiative or suggest how it might be applied if enacted.” *In re 2013-2014 #129*, 2014 CO 53,

¶ 18. The term “fees” is not devoid of legal content or pre-existing interpretations. *Cf. In re Title, Ballot Title & Submission Clause, & Summary For 1999-2000 No. 255*, 4 P.3d 485, 496-99 (Colo. 2000) (“The titles are not required to include definitions of terms unless the terms adopt a new or controversial legal standard which would be of significance to all concerned with the Initiative.” (internal marks omitted)). The word may (or may not) require further interpretation, and its application may (or may not) raise hard interpretive questions. *Cf. In re Title, Ballot Title & Submission Clause, & Summary for 1997-1998 No. 75*, 960 P.2d 672, 673 (Colo. 1998) (title is proper even if a term’s “definition must await future legislative and judicial construction and interpretation”). Either way, the potential reach of the term “fees” asserted by Petitioner still relates to the measure’s central purpose of *regulating fees*. It thus remains the same, single subject.

## **II. The title set by the Board satisfies the clear title standard.**

### **A. Standard of review and preservation.**

When considering a challenge to a title, the Court does not “consider whether the Title Board set the best possible title.” *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 17. The “Board’s duty in setting a title is to summarize the central features of a proposed initiative.” *In re Title, Ballot Title, & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 24. The Board “is given discretion in resolving interrelated problems of length, complexity, and clarity in setting a title and ballot title and submission clause.” *Id.* The Court will reverse the title set by the Board “only if a title is insufficient, unfair, or misleading.” *Id.* ¶ 8.

The Title Board agrees this issue is preserved in part. Petitioner argued in her motion that the “expansive reach” of the measure, and its effect “with regard to collection of all applicable fees,” were not clearly communicated by the initial title. *Record*, p 11; *Hearing*, at 2:16:42 to 2:18:00. Any arguments not encompassed therein are unpreserved.

**B. The initiative’s broad reach is plainly stated in the title.**

“An initiative’s single subject must be clearly expressed in its title.” *In re Title, Ballot Title & Submission Clause for 2019-2020 #315*, 2020 CO 61, ¶ 25. “The title and submission clause 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.” *Id.* (internal marks omitted). “When setting a title, the Title Board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a ‘yes/for’ or ‘no/against’ vote will be unclear.” *Id.* (internal marks omitted).

Here, the Board set a title clearly explaining to voters that the measure “prohibit[s] the collection of existing and new fees,” absent certain conditions. *Record*, p 7. The title also clearly explains that such fees, to be collected, would need to be “approved by voters of the areas served and collected only in those areas.” *Id.* This language “correctly and fairly express[es] the true intent and meaning” of the initiative. *In*

*re 2019-2020 #315*, 2020 CO 61, ¶ 25. It therefore satisfies the Board’s obligations.

Petitioner argues that this title does not fairly disclose to voters the initiative’s broad reach. *Record*, p 11; *Hearing*, at 2:16:42. Yet the “Board need not consider and resolve potential or theoretical disputes or determine the meaning or application of the” measure in setting a title. *In re Title, Ballot Title, & Submission Clause, & Summary for a Petition on Sch. Fin.*, 875 P.2d 207, 210 (Colo. 1994). The Board replaced the word “limiting” in the title with “prohibiting,” among other changes, to address Petitioner’s concerns—over the objection of Proponents. *Record*, pp 5 & 7; *Hearing*, at 2:16:05 to 2:16:42; 2:35:00 to 2:51:45. The revised title clearly describes the sum and substance of the matter and thus falls within the Board’s broad discretion.

## **CONCLUSION**

The Court should therefore affirm the title set by the Board.

Respectfully submitted on this 8th day of May 2024.

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*/s/ Joe Peters*

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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 8th day of May 2024, addressed as follows:

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