ADVANCE SHEET HEADNOTE
June 24, 2024

2024 CO 52

No. 24SA117, *In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023–2024 #175* — §1-40-107(2) — Satutory Jurisdiction — Ballot Title Board.

This case concerns the appropriate timeline for appeal of Title Board rulings pursuant to section 1-40-107(2). The supreme court reaffirms its prior holding in *In re Title, Ballot Title & Submission Clause & Summary for 1997–98 #62*, 961 P.2d 1077, 1079 (Colo. 1998) and finds that parties seeking review under section 1-40-107(2) must file their petition within seven days of the allegedly erroneous Title Board decision. Because Petitioner filed more than seven days after the underlying Title Board decision, the supreme court lacks jurisdiction to consider this case and dismisses the appeal.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2024 CO 52

Supreme Court Case No. 24SA117
Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2023)
Appeal from the Ballot Title Setting Board

In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #175

Petitioners:

Wayde Goodall and Darcy Schoening,

v.

Respondents:

Jamie Gentry-Cunningham, Jenna Lea Candreia Clinchard, Jude Kacey Clinchard, Iris Halpern, and Dr. Lora Melnicoe,

and

Title Board:

Theresa Conley, Kurt Morrison, and Jeremiah Barry.

Appeal Dismissed
en banc
June 24, 2024

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JUSTICE HART delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT, JUSTICE MÁRQUEZ, JUSTICE HOOD, JUSTICE GABRIEL, JUSTICE SAMOUR,** and **JUSTICE BERKENKOTTER** joined.

JUSTICE HART delivered the Opinion of the Court.

¶1 Section 1-40-107(2), C.R.S. (2023), requires parties seeking this court's review of a Title Board decision on a motion for rehearing to file an appeal within seven days. In this case, Wayde Goodall and Darcy Schoening ("Petitioners") appealed the Title Board's April 3 ruling on April 24. Petitioners assert that the seven-day statutory timeline does not run from the date of the challenged Title Board decision, but instead from the date the petitioner obtains a certified copy of the underlying Title Board proceedings, which here was on April 23.

¶2 We have previously held that section 1-40-107(2)'s filing deadline begins running on the date of the allegedly erroneous Title Board decision. *In re Title, Ballot Title & Submission Clause & Summary for 1997–98 #62*, 961 P.2d 1077, 1079 (Colo. 1998) ("*1997–98 #62*"). We perceive no reason to depart from this holding. We therefore hold that Petitioners' filing was untimely and dismiss the appeal for lack of jurisdiction.

I. Facts and Procedural History

¶3 Following their statutorily required review and comment meeting with the Legislative Council Staff and the Office of Legislative Legal Services, Petitioners filed Proposed Ballot Initiative 2023–24 #175 ("Initiative #175") with the Title Board on February 22, 2024. Initiative #175 seeks to limit gender-affirming medical procedures. The Title Board considered the measure at their March 6

meeting and concluded that it contained a single subject. Accordingly, the Board set a title.

¶4 On March 13, registered electors who opposed Initiative #175 filed a motion for rehearing arguing that the measure in fact contained multiple subjects. At the Title Board's April 3 rehearing, the three-member body agreed with the challengers and reversed their decision to set a title.

¶5 Petitioners then availed themselves of the process set forth in article V, section 1(5.5) of the Colorado Constitution and submitted revised text to the Title Board on April 5 without going back through the review and comment process. On April 17, the Title Board determined that it lacked jurisdiction to consider the resubmitted measure because the revisions had impermissibly added language and thus "involve[d] more than the elimination of provisions to achieve a single subject." Colo. Const. art. V, § 1(5.5).

¶6 On April 23, the Secretary of State sent Petitioners, pursuant to Petitioners' request under section 1-40-107(2), a certified copy of the underlying proceedings. On April 24, Petitioners filed an appeal with this court pursuant to section 1-40-107(2), asking us, in relevant part, to reverse both the Title Board's April 3 determination that Initiative #175 contained multiple subjects and its April 17 determination that Petitioners' resubmitted text did not comply with article V, section 1(5.5)'s curative process. However, during briefing, Petitioners amended

their request, asking that we review only the Title Board's April 3 decision. We accordingly restrict our consideration of this case to the April 24 appeal of the April 3 Title Board action.

II. Analysis

¶7 Whether we possess jurisdiction to consider a section 1-40-107(2) claim is a matter of statutory interpretation. We review these questions de novo. *Arvada Vill. Gardens LP v. Garate*, 2023 CO 24, ¶ 9, 529 P.3d 105, 107.

¶8 Following a motion for rehearing brought pursuant to section 1-40-107(1), section 1-40-107(2) permits electors who participated in the rehearing or the initiative's proponents to appeal the Title Board's final ruling to this court. If the dissatisfied elector or proponent wishes to appeal, section 1-40-107(2) provides that the Secretary of State "shall furnish such person" a copy of the rehearing record. And the statute mandates that "[i]f filed with the clerk of the supreme court within seven days thereafter, the matter shall be disposed of promptly, consistent with the rights of the parties, either affirming the action of the title board or reversing it . . . ." § 1-40-107(2).

¶9 Here, the parties dispute when the seven-day timeline begins to run. Respondents and the Title Board both assert that parties have seven days from the challenged Title Board decision to file an appeal, while Petitioners argue that they

have seven days from the date the Secretary of State provides the certified record. We agree with Respondents and the Title Board.

¶10 In *1997–98 #62*, we considered the same arguments in a dispute over the proper construction of former section 1-40-107(2), C.R.S. (1998), which is functionally identical to the current statute. 961 P.2d at 1079. At that time, the statute gave parties five, rather than seven, days to file an appeal with the clerk of the supreme court. *Id.* We concluded that "an appeal from the Board's title and summary setting action must be filed within five days of the Board's denial of the rehearing motion, pursuant to section 1-40-107(2)," summarily rejecting the petitioner's claim that "the five day filing period runs from the time the secretary of state answers the request for certified documents." *Id.*

¶11 We adopted this construction out of respect for the General Assembly's desire to ensure "finality of Board action" and in recognition of the fact that the Secretary of State provides certified records only "upon request." *Id.* at 1079–80. Had the court adopted the petitioner's construction of the statute, parties could indefinitely delay appeals simply by waiting to request a copy of the proceedings. *Id.* While the time limit has changed from five days to seven, that does not justify abandoning our prior decision defining the event that triggers the deadline. We perceive no "sound reasons" to depart from our prior holding and decline Petitioners' invitation to do so. *Russell v. People*, 2020 CO 37, ¶ 20, 462 P.3d 1092,

1096. Accordingly, Petitioners' claim is untimely, and we lack jurisdiction to consider whether the Title Board correctly ruled that Initiative #175 contained multiple subjects.

III. Conclusion

¶12 To obtain review of the Title Board's April 3 decision in a section 1-40-107(2) proceeding, Petitioners needed to file an appeal within seven days of April 3, well before their actual filing date of April 24. Because they filed an untimely appeal, we lack jurisdiction to consider their case. We accordingly dismiss this appeal.