ADVANCE SHEET HEADNOTE
June 24, 2024

2024 CO 53

No. 24SA120, *In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023–2024 #188*—§ 1-40-107(2)—Statutory Jurisdiction—Ballot Title Board.

The supreme court holds that it lacks jurisdiction to consider appeals under section 1-40-107(2) if the underlying motion for rehearing did not comply with section 1-40-107(1). Here, Petitioner asked the Title Board to reconsider whether the revisions to Proposed Initiative #188 complied with aspects of the revision and resubmission provisions contained in article V, section 1(5.5) of the Colorado Constitution. Section 1-40-107(1) does not permit motions for rehearing on this question, so the court dismisses the appeal for lack of jurisdiction under 1-40-107(2).

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

2024 CO 53

Supreme Court Case No. 24SA120
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 #188

Petitioner:

Mark Chilson,

v.

Respondents:

Jason Bertolacci and Owen Alexander Clough,

and

Title Board:

Theresa Conley, Christy Chase, and Jennifer Sullivan.

Appeal Dismissed
en banc
June 24, 2024

Attorneys for Petitioner:
Gessler Blue LLC
Scott E. Gessler
Geoffrey N. Blue
Greenwood Village, Colorado

Attorneys for Respondents:
Brownstein Hyatt Farber Schreck LLP
Sarah M. Mercer
David B. Meschke
Rosa L. Baum
Denver, Colorado

Attorneys for Title Board:
Philip J. Weiser, Attorney General
Michael Kotlarczyk, Assistant Solicitor General
Denver, Colorado

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 In this appeal, Mark Chilson ("Petitioner") asks the court to reverse the Title Board's decision to set a title for Proposed Ballot Initiative 2023–24 #188 ("Initiative #188"). Petitioner invokes this court's jurisdiction pursuant to section 1-40-107(2), C.R.S. (2023). But in a section 1-40-107(2) proceeding, this court can only review a Title Board action taken after a properly filed motion for rehearing.

¶2 Here, Petitioner asserts that the Title Board erred in determining that Initiative #188—which proponents resubmitted pursuant to article V, section 1(5.5) of the Colorado Constitution—complied with section 1(5.5)'s requirements. This claim is not included in the statutory grounds for a rehearing. Accordingly, the motion for rehearing was not properly filed, and we lack jurisdiction to consider the appeal.

I. Facts and Procedural History

¶3 Jason Bertolacci and Owen Alexander Clough (collectively, "Respondents"), the proponents of Initiative #188, seek to place a proposed constitutional amendment on the 2024 general election ballot changing the way candidates are selected for political office in Colorado. Initiative #188 is one of several measures Respondents advanced through the ballot initiative process in this effort.

¶4 For Initiative #188, Respondents first submitted their proposal to the Legislative Council Staff and the Office of Legislative Legal Services for "review

and comment" in February 2024. § 1-40-105(1), C.R.S. (2023). Shortly thereafter, on March 7, the Title Board first considered whether Initiative #188 complied with Colorado's constitutional single-subject requirement. Colo. Const. art. V, § 1(5.5); § 1-40-106.5, C.R.S. (2023). The three-member Title Board initially concluded that Initiative #188 contained a single subject and set a title and submission clause for the measure.

¶5 On March 13, Petitioner—a registered elector who objected to Initiative #188 on the ground that it contained more than one subject—filed a motion for rehearing with the Title Board, pursuant to section 1-40-107(1). After hearing arguments on March 20, the Board concluded that it had made a mistake and reversed course, finding that the measure lacked a single subject.

¶6 Respondents did not appeal to this court, as they could have under section 1-40-107(2), nor did they start the process over by putting a new initiative in front of the Legislative Council Staff and the Office of Legislative Legal Services. Instead, Respondents elected to revise Initiative #188 and resubmit it to the Title Board through a little-used process set out in article V, section 1(5.5) of the Constitution. That provision explains that, if the Title Board finds that a measure contains more than one subject, then "the measure may be revised and resubmitted for the fixing of a proper title without the necessity of review and comment on the revised measure in accordance with subsection (5) of this section,

unless the revisions involve more than the elimination of provisions to achieve a single subject." Colo. Const. art. V, § 1(5.5).

¶7 The Title Board considered Initiative #188's revised text at its April 4 hearing. The Board first determined that article V, section 1(5.5) permitted the resubmission of a ballot measure after that measure's initial rehearing and that it had jurisdiction to consider the resubmitted measure. The Board then concluded that the revisions to Initiative #188 complied with article V, section 1(5.5) because (1) the revisions did no more than eliminate provisions to achieve a single subject and (2) the resubmitted measure in fact contained a single subject. Accordingly, the Title Board set a title and submission clause for the revised measure.

¶8 Petitioner once again filed a motion for rehearing, this time arguing that the resubmitted text did not comply with article V, section 1(5.5)'s requirements because the revisions eliminated more than was necessary to achieve a single subject and that, accordingly, the Title Board lacked jurisdiction to set a title. The Title Board denied the motion. The reason for the denial is unclear from the certified record.

¶9 Petitioner then filed an appeal pursuant to section 1-40-107(2), arguing that (1) the revisions "involve[d] more than the elimination of provisions to achieve a single subject"; (2) "[t]he plain language of [s]ection 1(5.5) prohibits proponents from eliminating language that is unnecessary to achieve a single subject"; and

(3) "[t]he Title Board had no jurisdiction . . . because the Proponents eliminated provisions unnecessary to achieve single subject." (First alteration in original.)

¶10 Petitioner and Respondents now contest whether, as a preliminary matter, this court has jurisdiction to consider Petitioner's claims.

II. Analysis

¶11 We begin by laying out the applicable standard of review for the question of statutory interpretation this appeal presents. We then set forth the relevant law and apply that law to the facts we confront here. Ultimately, we conclude that Petitioner's grounds for rehearing are outside those permitted by section 1-40-107(1). Because our appellate jurisdiction under section 1-40-107(2) is tied to the permissible grounds for rehearing under section 1-40-107(1), we do not have jurisdiction to hear Petitioner's appeal. Accordingly, we dismiss this appeal for lack of jurisdiction.

A. Standard of Review

¶12 The Title Board is an administrative agency, and the right of review Petitioner invokes—section 1-40-107(2)—is statutory in nature. *See In re Title, Ballot Title & Submission Clause, "W.A.T.E.R.,"* 831 P.2d 1301, 1305 (Colo. 1992) ("We have no quarrel with the proposition that the [Title] Board qualifies as an agency."). In reviewing administrative proceedings brought pursuant to a statutory right of review, we lack jurisdiction to consider claims that do not

comply with the statutory process. *See Barber v. People*, 254 P.2d 431, 433–34 (Colo. 1953) (describing the "well-established rule" that, in statutory proceedings, "[t]here must be a strict compliance with the provisions of such a statute, which are mandatory," or "the court has no jurisdiction to act."). More recent cases have reaffirmed *Barber*. *See, e.g.*, *Associated Gov'ts of Nw. Colo. v. Colo. Pub. Utils. Comm'n*, 2012 CO 28, ¶ 8, 275 P.3d 646, 648–49; *State v. Borquez*, 751 P.2d 639, 644 (Colo. 1988).

¶13 We review issues of statutory interpretation de novo. *Arvada Vill. Gardens LP v. Garate*, 2023 CO 24, ¶ 9, 529 P.3d 105, 107. Our primary responsibility in interpreting any statute is to "give effect to the legislative purpose underlying its enactment." *In re Title, Ballot Title & Submission Clause for 2019–20 #74,* 2020 CO 5, ¶ 8, 455 P.3d 759, 761 (quoting *In re Title, Ballot Title & Submission Clause, & Summary for 1999–00 #219*, 999 P.2d 819, 820 (Colo. 2000)). In so doing, we "look to the entire statutory scheme" to "give consistent, harmonious, and sensible effect to all of its parts, and we apply words and phrases in accordance with their plain and ordinary meanings." *Bill Barrett Corp. v. Lembke,* 2020 CO 73, ¶ 14, 474 P.3d 46, 49 (quoting *Blooming Terrace No. 1, LLC v. KH Blake St., LLC*, 2019 CO 58, ¶ 11, 444 P.3d 749, 752).

B. Section 1-40-107

¶14 Section 1-40-107 establishes the procedures for a rehearing before the Title Board and an appeal of a Title Board's decision on rehearing to this court.

¶15 Section 1-40-107(1) permits initiative proponents and interested electors who are dissatisfied with the initial decision of the Title Board to file a motion for rehearing with the Title Board itself within seven days of the initial decision. Review is limited to certain delineated topics—a list that the General Assembly has expanded over the years but that it has always kept limited. *See In re Title, Ballot Title & Submission Clause for 2017–18* #4, 2017 CO 57, ¶ 16, 395 P.3d 318, 322 (discussing recent amendments allowing for motions for rehearing on questions relating to the fiscal impact statement); *see also Cain v. People*, 2014 CO 49, ¶ 13, 327 P.3d 249, 253 (explaining that the inclusion of certain allowances in a statute necessarily implies the exclusion of those not listed).

¶16 Today, motions for rehearing are permitted to challenge:

- "whether a [ballot measure] contains more than a single subject pursuant to section 1-40-106.5";
- whether the title adopted by the Title Board is "unfair" or "do[es] not fairly express the true meaning and intent" of the measure;
- whether "the fiscal summary is misleading or prejudicial" or "does not comply with the requirements set forth in section 1-40-105.5(1.5)"; or
- whether a measure "that proposes a constitutional amendment only repeals in whole or in part a provision of the state constitution."

§ 1-40-107(1)(a).

¶17 After the Title Board has ruled on a motion for rehearing, certain persons may appeal that decision to this court under section 1-40-107(2) (including proponents of a measure, opponents who filed a motion for rehearing, or any other elector who appeared before the Title Board in support of or in opposition to the motion for rehearing) if they are "not satisfied" with the Title Board's ruling. All of the bases for an appeal to this court throughout the ballot initiative process are tied to the rehearing, which is itself limited by the terms of section 1-40-107(1). There is no provision in section 1-40-107(2) for an appeal when the motion for rehearing was made on improper grounds.

C. Application

¶18 Petitioner's motion for rehearing did not challenge the Title Board's conclusion that the revised and resubmitted Initiative #188 included only a single subject. Nor did it present any of the other grounds listed in section 1-40-107(1)(a). Instead, Petitioner disputed the Title Board's jurisdiction to consider the resubmitted measure, arguing that the revision did more than eliminate provisions necessary to achieve a single subject and therefore went beyond the scope of article V, section 1(5.5)'s resubmission process. This is not a permissible basis for rehearing at the Title Board under section 1-40-107(1)(a).

¶19 Petitioner argues that his claims about section 1(5.5) are "integrated" with the question of whether Initiative #188 possesses a single subject such that his motion complies with section 1-40-107(1)'s limitations. We disagree. True, to determine whether a revision did more than necessary to achieve a single subject, one may first have to answer whether the initiative contains a single subject. But the two questions are different, and the General Assembly has not included the latter question among the grounds for a motion for rehearing under section 1-40-107(1)(a).

¶20 Because our jurisdiction to hear appeals pursuant to section 1-40-107(2) is tied directly to the jurisdictional limits set forth in section 1-40-107(1), Petitioner's failure to file a motion for rehearing permitted by section 1-40-107(1)(a) deprives us of jurisdiction to hear this appeal.

¶21 Petitioner points to earlier cases in which we reviewed Title Board orders even though they involved grounds that were not included in then-applicable section 1-40-107(1), and argues that those cases demonstrate that we do not limit our jurisdiction based on statutory language. *See, e.g.*, *In re Title, Ballot Title & Submission Clause, & Summary for 1999–00 #256*, 12 P.3d 246 (Colo. 2000); *In re Proposed Initiative 1996-4*, 916 P.2d 528 (Colo. 1996). However, in those cases, none of the parties raised, nor did we consider, whether we had jurisdiction to consider those cases. Now, having considered the question, we conclude that, unless the

Title Board had jurisdiction to consider a motion for rehearing because the motion raised one of the grounds set forth in section 1-40-107(1), we do not have jurisdiction to consider an appeal pursuant to section 1-40-107(2).

¶22 The General Assembly may choose to amend section 1-40-107 to permit us to review a Title Board action concerning acceptable edits under article V, section 1(5.5)'s resubmission procedures. As the statute is currently written, however, this review is unavailable.

III. Conclusion

¶23 In proceedings governed exclusively by statute, a petitioner's failure to comply with the terms of the statute precludes this court from exercising jurisdiction. In this case, Petitioner's motion for rehearing was not permitted by section 1-40-107(1). Because this court cannot consider a section 1-40-107(2) claim predicated on anything other than a properly filed motion for rehearing under section 1-40-107(1), we lack jurisdiction to consider Petitioner's arguments. Accordingly, we dismiss this case and leave the underlying ruling of the Title Board undisturbed.