

SUPREME COURT, STATE OF COLORADO
2 East 14th Avenue
Denver, Colorado 80203

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

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative 2023-
2024 #284

Petitioners: Jessica Goad

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 No.: 2024SA134

**PETITIONER'S ANSWER BRIEF IN OPPOSITION TO
PROPOSED INITIATIVE 2023-2024 #284**

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, the undersigned certifies that the brief complies with C.A.R. 28(g).

It contains 2138 words.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

By: s/Martha M. Tierney_____

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Jessica Goad (“Petitioner”), registered elector of the State of Colorado, through her undersigned counsel, respectfully submits this Answer Brief in opposition to Proposed Initiative 2023-2024 #284 (“Initiative #284”).

SUMMARY OF THE ARGUMENT

Initiative #284 contains multiple subjects because the measure risks both “dangers” at play in the ballot initiative process. First, under the broad theme of “collection of transit fees” the measure combines subjects with no necessary or proper connection for the purpose of garnering support for the initiative from various factions that may have different or even conflicting interests, which could lead to the enactment of a measure that would fail on its own merits. The measure unites multiple subjects under its purported broad theme of “limiting new and existing fees that fund mass transit.” First, the Initiative does not define “fees,” that term could cover a whole range of different topics. Additionally, the measure will divest various governmental authorities of their statutory and regulatory power until, and if, at a future election, voters approve fees that will fund the mass transit projects. This will result in a halt of existing mass transit services until a vote of the people could occur, possibly many months or years in the future. These disparate matters will inevitably create factions that have different interests, and some of

those interests will appeal to some voters, and others to other voters. This is classic logrolling and violates the single subject requirement.

Second, it will create voter surprise and fraud occasioned by the surreptitious provisions coiled up in the folds of a complex initiative. Some voters may vote for this measure thinking that they are voting only to require mass transit to be funded by fees collected in the areas served by the transit but will be surprised to find that the measure will divest various governmental authorities of their statutory and regulatory power until, and if, at a future election, voters approve fees that will fund the mass transit projects. This cessation of current and future mass transit infrastructure and divestment of government authority until a vote of the people occurs is coiled up in the folds of Initiative #284.

The Title Board improperly set a title for Initiative #284 because it violates the single subject requirement. The Title Board further set a misleading title that does not clearly provide a general understanding of the effect of a "yes" or "no" vote to the voting electorate.

This Court should find that Proposed Initiative 2023-2024 #284 violates the single subject requirement, or in the alternative, that the title as set by the Title Board does not correctly and fairly express the true intent and meaning of the measure.

ARGUMENT

I. **Initiative #284 Has Multiple Subjects.**

Initiative #284 violates the single subject requirement. Both the broad umbrella subject of “fees” and the retroactive nature of the measure halting mass transit services create separate subjects.¹ Despite Respondents claim that the subject of the measure is “limiting new and existing fees that fund mass transit,” this broad umbrella theme of Initiative #284 extends far beyond fees. The Initiative, by its terms, requires a vote of the people before any fees may be assessed for the purpose of funding mass transportation such as buses and a wide range of rail projects. R. 3. This requirement will cause some (or all?) mass transit authorities to cease operating until fees can be approved and restored. In so doing, the Initiative divests numerous governmental authorities overseeing and operating mass transit in Colorado of some, or all, of their existing statutory and regulatory power, until, and only if, at some future date there is an election at which voters approve a fee to fund the

¹ During the rehearing on Initiative #284 on April 25, 2024, Petitioner contended that Respondents’ intent was that Initiative #284 would be retroactive, requiring a stoppage of current transit options until a vote could occur. See [Title Board Meeting April 25, 2024, 10:00 A.M. \(granicus.com\)](#) 2:13:54 – 2:14:42. Respondents agreed that was their intent. *Id.* By raising this issue at the rehearing, Petitioner preserved this issue for appeal.

transit.² This subject of removing statutory and regulatory power of existing governmental authorities overseeing and operating mass transit is a second subject.

In prior ballot title cases, this Court has reversed the Title Board's action in setting titles for initiatives affecting substantial rearrangement of existing governmental powers, just as Initiative # 284 proposes. For example, in *In re Initiative for 1997-1998 # 64*, 960 P.2d 1192, 1196 (Colo. 1998), the Court reviewed an initiative which proposed substantial changes to the judicial branch of state government. 960 P.2d at 1194. Initiative # 64 dealt generally with qualifications of judicial officers, but it also sought to divest the Judicial Discipline Commission -- the governmental body charged with investigating and enforcing the Colorado Code of Judicial Conduct -- of its regulatory and remedial powers. *Id.* at 1199. The Court held that Initiative # 64's proposed changes to the commission were a separate subject, because the power of the commission is derived from a separate and independent constitutional basis, from the judicial power vested in the courts. *Id.*;

² The governmental authorities with regulatory and statutory power over mass transit in Colorado include the Colorado Transportation Commission; the Colorado Department of Transportation; the Colorado Public Utilities Commission; the General Assembly; Transportation Planning Regions and Metropolitan Planning Organizations; the Statewide Transportation Advisory Committee; and regional transit authorities such as the Regional Transportation District (“RTD”), and Mountain Metropolitan Transit.

see also In re Initiative for 1999-2000 No. 29, 972 P.2d 257, 262 (Colo. 1999)

(discussing and applying *In re # 64, 960 P.2d at 1199*).

Initiative #284 sets up the kind of log rolling that the single subject requirement is designed to prevent. The prohibition against multiple subjects "discourages placing voters in the position of voting for some matter they do not support to enact that which they do support." *In re Initiative for 2005-2006 # 55, 138 P.3d 273, 282 (Colo. 2006)*. A voter going to the polls in the upcoming general election might favor requiring people who live in an area served by a particular mass transit system to be the ones who pay fees to fund such mass transit, while being opposed to depriving the Colorado Department of Transportation from overseeing and operating the Bustang bus service until a future election when, and if, voters approve the fee to fund it, or vice versa.

Initiative #284 also presents the type of voter surprise that the single subject requirement forbids. Voters confronted with this broad and ambiguous ballot initiative purporting to limit mass transit fees might be surprised to learn that the initiative, if adopted, would interrupt existing transit service, and deprive RTD from operating existing train, bus, and light rail lines until after some future election at which the fees to fund the transit could be placed on the ballot. Discovery of this second purpose is revealed only through a close reading of the initiative and an

appreciation of how its sections interrelate. Such subterfuge is precisely what the constitutional prohibition against multiple subjects was designed to prevent. *Howes v. Brown*, 235 P.3d 1071, 1079 (Colo. 2010).

“If an initiative advances separate and distinct purposes, the fact that they both relate to the same general concept or subject is insufficient to satisfy the single subject requirement.” *Johnson v. Curry (In re Title, Ballot Title & Submission Clause for 2015-2016 #132)*, 2016 CO 55, ¶ 13.

The upheaval to existing mass transit is coiled up in the folds of Initiative #284. Initiative #284 contains multiple subjects in violation of the single subject requirement.

II. The Title Board Erred When It Denied Petitioner’s Motion for Rehearing on Clear Title.

The title of Initiative #284 is misleading and will not allow voters to make an informed decision about the initiative’s true intent and meaning. Titles and submission clauses 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." *In re Title, Ballot Title & Submission Clause for Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 242 (Colo. 1990).

Here, due to the hidden features of the measure coiled up in its folds, the title to Initiative #284 should clearly tell voters how the initiative impacts existing and future mass transit infrastructure, and how the measure divests from governmental authorities their role in overseeing and operating existing mass transit projects pending a future vote to allow funding for those projects to continue.

The title further fails to inform voters what fees are captured by the measure. As drafted, the title does not allow voters to understand the effect of a yes or no vote. *See In re Petition Procedures*, 900 P.2d 104, 108 (Colo. 1995).

CONCLUSION

Respondent respectfully requests the Court find that Proposed Initiative 2023-2024 #284 violates the single subject requirement, or in the alternative that the title as set by the Title Board does not correctly and fairly express the true intent and meaning of the measure.

Respectfully submitted this 15th day of May 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May 2024 a true and correct copy of the foregoing **PETITIONER'S ANSWER BRIEF IN OPPOSITION TO PROPOSED INITIATIVE 2023-2024 #284** was filed and served via the Colorado Courts E-Filing System to the following:

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