

SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	
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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PETITIONER’S OPENING 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 3055 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 Opening Brief in opposition to Proposed Initiative 2023-2024 #284 (“Initiative #284”).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the Title Board erred in determining that proposed initiative 2023-2024 #284 contains a single subject.
2. Whether the Title Board set a misleading title for proposed initiative 2023-2024 #284.

STATEMENT OF THE CASE

This is an appeal of the Title Board’s setting of title on proposed Initiative #284. Respondents Michele Haedrich and Steven Ward (“Respondents” or “Proponents”) proposed Initiative #284. The Title Board conducted its initial hearing on April 17, 2024, at which time the Title Board found Initiative #284 had a single subject and set a title. On April 24, 2024, Petitioner Goad filed a Motion for Rehearing, alleging that Initiative #284 contained multiple subjects, and that its title was flawed. Respondents Haedrich and Ward also filed a motion for rehearing on April 24, 2024, seeking changes to the title previously set by the Title Board.

The Title Board held a rehearing on April 25, 2024, at which time the Title Board granted Petitioner Goad’s Motion for Rehearing and Respondents’ Motion for Rehearing only to the extent that it made changes to the title. The Title Board set the title for Initiative #284 as follows:

Shall there be 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?

Petitioner Goad timely filed this appeal.

SUMMARY OF THE ARGUMENT

As proposed, 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.” But because Initiative #284 does not define “fees,” that term could cover a whole range of different topics. For

example, fees could include all types of charges that may be assessed for the purpose of funding mass transportation, including surcharges, special assessments, fines, and penalties. Additionally, Proponents assert that their intent (as accepted by the Title Board) is that the initiative is retroactive, requiring a vote of the people for all existing mass transit fees, including those for the Regional Transportation District (“RTD”) and other existing transit infrastructure, potentially resulting in a halt of all 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 halt the collection of fees that fund existing transit infrastructure, and could close existing, and prevent future, transit options until voters approve of each particular mass transit plan. This cessation of current

and future mass transit infrastructure 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. **The Initiative Violates the Single Subject Requirement.**

A. **Standard of Review and Preservation.**

Article V, section 1(5.5) of the Colorado Constitution, and section 1-40-106.5(1)(a), C.R.S. state that a proposed initiative must be limited to “a single subject which shall be clearly expressed in its title.” “A proposed initiative violates this rule if its text relates to more than one subject, and has at least two distinct and separate purposes not dependent upon or connected with each other.”

In re Initiative for 2011-2012 #3, 2012 CO 25, ¶ 9.

Pursuant to Colo. Const. art. V, §1(5.5),

[N]o measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls.

See also 1-40-106.5, C.R.S. The Court does “not address the merits of the proposed initiative” or “suggest how it might be applied if enacted.” *In re Initiative for 2019-2020 #3*, 2019 CO 57, ¶ 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. “[T]he Board may not set the titles of a proposed Initiative, or submit it to the voters, if the Initiative contains multiple subjects.” *Aisenberg v. Campbell (In re Title, Ballot Title & Submission Clause 1990-2000 #104)*, 987 P.2d 249, 253 (Colo. 2000).

Petitioner preserved the single subject issue in her Motion for Rehearing and at the rehearing on April 25, 2024.

B. The Title Board Erred in Concluding That Initiative #284 Contains a Single Subject.

Initiative #284 has multiple subjects. The single subject requirement serves two functions. First, the single subject requirement “is intended to ensure that each proposal depends upon its own merits for passage.” *Johnson v. Curry (In re Title,*

Ballot Title & Submission Clause for 2015-2016 #132), 2016 CO 55, ¶ 13.

Second, the single subject requirement is intended to “prevent surprise and fraud from being practiced upon voters caused by the inadvertent passage of a surreptitious provision ‘coiled up in the folds’ of a complex initiative.” *Id.* “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.” *Id.* Both dangers are present are present in Initiative #284.

In reviewing the Title Board’s single subject determination, the Court must determine “whether the contested language within the initiative creates a distinct and separate subject which is not connected to or dependent upon the remaining aspects of the initiative.” *In re Initiative for 2013-2014 #76*, 2014 CO 52, ¶ 8. To satisfy the single-subject requirement, the “subject matter of an initiative must be necessarily and properly connected rather than disconnected or incongruous.” *Id.*

1. Initiative #284 Presents a Logrolling Risk.

The Title Board erroneously found that Initiative #284 meets the single subject requirement. The measure unites multiple subjects under its purported broad theme of “limiting new and existing fees that fund mass transit.” When carefully considered, the breadth and reach of Initiative #284 extends far beyond what the Proponents contend. The language of the measure states that “[a]ny fees

assessed for the purpose of funding mass transportation such as bus, light rail, high speed rail, passenger rail or fixed rail projects ... must (a) be assessed only to a person who makes the transaction in an area that is served by such mass transportation; and (b) be approved by a vote of the people in the state or political subdivision where such fees will be collected.” R. 3.

But because Initiative #284 does not define “fees,” that term could cover a whole range of different topics. For example, fees could include all types of charges that may be assessed for the purpose of funding mass transportation, including surcharges, special assessments, fines, and penalties. It is unclear how fees assessed for multiple purposes, one of which is funding of a mass transit project, are treated under the measure and whether those fees are also captured.

Additionally, Proponents, during both Title Board hearings, indicated that their intent (which was accepted by the Title Board and which the language supports) is that the initiative is retroactive, requiring a vote of the people for all existing mass transit fees, including those for the Regional Transportation District and other existing transit infrastructure, potentially resulting in a halt of all existing

mass transit services until a vote of the people could occur, possibly many months or years in the future.¹

Initiative #284 combines proposals that voters might favor with those they would otherwise oppose, in order to achieve passage.” See *In re Initiative for 2005-2006 #55*, 138 P.3d 273, 282 (Colo. 2006). “To avert such mischief, the single subject requirement limits the voters to answering "yes" or "no" to a straightforward, single subject proposal.” *In re Petition Procedures*, 900 P.2d 104, 108 (Colo. 1995).

Here, some voters might favor only requiring users of the transit to pay for its implementation, for example, but might not favor halting existing mass transit operations until, and if, a vote of the people authorizes their continuance, or visa-versa. Initiative #284 unconstitutionally combines multiple subjects in an attempt to attract voters who might oppose one of those subjects if it were standing alone. See *In re Initiative for 2013-2014 #76*, 2014 CO 52, ¶10. In this way, Initiative #284 violates the single subject requirement.

¹ See discussion at Title Board hearing April 25, 2024, [Title Board Meeting April 25, 2024 10:00 A.M. \(granicus.com\)](#) at 2:19:12 - 2:19:30.

2. **Initiative #284 Risks Voter Confusion and Surprise.**

Initiative #284 also risks voter confusion or surprise. A primary purpose of the single subject requirement is to “obviate the risk of ‘uninformed voting caused by items concealed within a lengthy or complex proposal’” *See In re Initiative for 2001-2002 #43*, 46 P.3d 438, 446 (Colo. 2002). While Initiative #284 is not long, a measure can be “complex” without necessarily being “lengthy” – indeed a short and seemingly simple initiative, directed to a large and moderately complex body of law, can harbor the most pernicious surprises “coiled up in [its] folds.” *Id.*

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 decrease, and likely halt, existing transit services until voters approve of each particular mass transit plan. This is the classic “coiled up in the folds” scenario whereby the voting public will be affirmatively surprised to learn that the measure will unduly restrict existing and future transit options.

This 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 Improperly Denied Petitioner’s Motion for Rehearing on Clear Title.

A. Standard of review and preservation.

“The Title Board’s duty in setting a title is to summarize the central features of a proposed initiative.” *In re Initiative for 2013-2014 #90*, 2014 CO 63, ¶ 24.

The title must fairly reflect the contents of the proposed initiative and contain “sufficient information to enable voters to determine intelligently whether to support or oppose the initiative.” *In re Initiative for 2015-2016 #73*, 2016 CO 24, ¶32.

Petitioner preserved her challenge to clear title in her Motion for Rehearing and at the rehearing on April 25, 2024.

B. The Title Does Not Correctly and Fairly Express Initiative #284’s True Intent and Meaning.

The title of Initiative #284 is misleading and does not correctly and fairly express the initiative’s true intent and meaning. Section 1-40-106(3)(b), C.R.S. provides:

In 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" or "no" vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly express the true intent and meaning thereof, together with the ballot title and submission clause. . .

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)). "The purpose of reviewing an initiative title for clarity parallels that of the single-subject requirement: voter protection through reasonably ascertainable expression of the initiative's purpose." *Outcalt v. Bruce (In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 37)*, 977 P.2d 845, 846 (Colo. 2000). Here, perhaps because the text of the proposed initiative is difficult to comprehend, the intent of the measure will not be clear to the voters with the current title. In particular, the title fails to convey to voters the initiative's likely impact on existing and future mass transit infrastructure. The title does not apprise voters that existing mass transit will cease to operate until a vote of the people to authorize continuation of the transit can occur.

The title further fails to inform voters what fees are captured by the measure. The term "fee" could include all types of charges that may be assessed for the purpose of funding mass transportation, including surcharges, special assessments, fines, and penalties. The title is silent on how fees assessed for multiple purposes,

one of which is funding of a mass transit project, are treated under the measure and whether those fees are also captured. 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 at 108.

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 8th day of May 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May 2024 a true and correct copy of the foregoing **PETITIONER'S OPENING 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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