

**COLORADO SUPREME COURT**  
2 East 14<sup>th</sup> Avenue  
Denver, CO 80203

Original Proceeding  
Pursuant to Colo. Rev. Stat. § 1-40-107(2)  
Appeal from the Ballot Title Setting 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 Number: 2024SA134

**RESPONDENTS MICHELE HAEDRICH AND STEVEN WARD’S  
OPENING BRIEF**

## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

**The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).**

It contains 1,898 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 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).**

For each issue raised by the appellant, 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.

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Respondents Michele Haedrich and Steven Ward, registered electors of the State of Colorado and the designated representatives of the proponents of Initiative 2023-2024 #284 (“Initiative #284”), through counsel respectfully submit their Opening Brief in support of the title, ballot title, and submission clause (the “Title”) set by the Title Board for Initiative #284.

### **STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

1. Did the Title Board err in finding that Initiative #284 properly contains a single subject in conformance with of Colo. Const. art. V, §1(5.5.) and Colo. Rev. Stat. § 1-40-106.5?
2. Did the Title Board err in setting a clear title for Initiative #284?

### **STATEMENT OF THE CASE**

This is an original proceeding pursuant to section 1-40-107(2), C.R.S. Respondents filed Initiative #284 concerning fees assessed to fund mass transportation with the Secretary of State on March 22, 2024. Initiative #284 would require voter approval of fees that fund bus and passenger rail mass transportation from voters in the transit service area.

The Title Board conducted its initial public hearing and set the title for Initiative #284 on April 17, 2024. Petitioner filed a motion for rehearing on April 24, 2024. The Title Board considered the motion at its April 25, 2024, hearing where

the Title Board granted the motion only to the extent that it made a change to the title and ballot title and denied the remainder of the motion.

Accordingly, the Title Board set the final ballot title and submission clause for Initiative #284 as:

“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 sought review of the Title Board’s action under Colo. Rev. Stat. § 1-40-107(2) seeking review of Initiative #284 based on single subject and clear title claims.

### **SUMMARY OF THE ARGUMENT**

The Title Board was correct in its determination that Initiative #284 contains a single subject, which is the limitation on fees assessed to fund mass transportation. The provisions of Initiative #284 are properly related, and the Title Board correctly found a single subject in accordance with the law.

The Title Board appropriately exercised its broad discretion drafting the Title for Initiative #284. Accordingly, the Title set by the Title Board fairly and accurately sets forth the central features of Initiative #284 as required by statute.

For these reasons, the decision of the Title Board should be affirmed.

## **ARGUMENT**

### **I. Initiative #284 Meets the Single Subject Requirement**

#### **A. Standard of Review**

The Court’s role in reviewing Title Board actions is limited, and “employ[s] all legitimate presumptions in favor of the propriety of the Title Board’s actions and will overturn its finding that an initiative contains a single subject only in a clear case. *Milo v. Coulter (In re Title, Ballot Title & Submission Clause for 2013-2014 #129)*, 333 P.3d 101, 103-04 (Colo. 2014); citing *Kemper v. Hamilton (In re Title, Ballot Title & Submission Clause for 2011-2012 #3)*, 274 P.3d 562, 565 (Colo. 2012) and *Earnest v. Gorman (In re Title, Ballot Title & Submission Clause for 2009-2010 #45)*, 234 P.3d 642, 645 (Colo. 2010). The Court will “also liberally construe the single subject requirement to ‘avoid unduly restricting the initiative process.’” *Id.*, quoting *Hayes v. Lidley (In re Title, Ballot Title and Submission Clause for 2009-2010 #24)*, 218 P.3d 350, 353 (Colo. 2009). The Court’s “limited role in this process prohibits ... addressing the merits of a proposed initiative or



suggesting how an initiative might be applied if enacted.” *Milo*, 333 P.3d 101, 104; citing *In re Title v. Respondents: Dennis Polhill & Douglas Campbell, Proponents, & Title (In re Title, Ballot Title & Submission Clause for Proposed Initiative 2001-2002 #43)*, 46 P.3d 438, 443 (Colo. 2002).

### **B. Provisions Must be Related to One Object or Purpose**

The Colorado Constitution requires a measure proposed by petition to contain only one subject. Colo. Const. art. V § 1(5.5). “To run afoul of the single-subject requirement, the proposed initiative must have at least two distinct and separate purposes that are not dependent upon or connected with each other.” *Earnest*, 234 P.3d at 645, citing *Hayes*, 218 P.3d at 352.

“[A] proposed measure that ‘tends to effect or to carry out one general objective or purpose presents only one subject.’” *Herpin v. Head (In re Title, Ballot Title & Submission Clause)*, 4 P.3d 485, 495 (Colo. 2000); citing *Title v. Bruce (In re Title, Ballot Title & Submission Clause for 1999-2000 # 25)*, 974 P.2d 458, 463 (Colo. 1999).

Even if there is broad applicability, “breadth, by itself, does not necessarily violate the single-subject requirement.” *Milo*, 333 P.3d at 105, citing *In re Title v. John Fielder (In re Title, Ballot Title & Submission Clause for 1999-2000 #256)*, 12 P.3d 246, 254 (Colo. 2000). Rather, single subject exists when “the matters

encompassed by the initiative are necessarily and properly connected to each other rather than disconnected or incongruous.” *Milo*, 333 P.3d at 105, citing *Kemper*, 274 P.3d at 565.

The single subject of Initiative #284 is the limitation of fees assessed to fund mass transportation. There is no unconnected, distinct separate purpose. Initiative #284 easily passes the single subject requirement.

**C. Initiative #284 Does Not Implicate Dangers to be Prevented by Single Subject Requirement**

The purpose of the single-subject requirement for proposed voter initiatives is to prevent two “dangers” of multi-subject initiatives: first, it prevents the enactment of combined measures that would fail on their individual merits; second, it protects against fraud and surprise occasioned by the inadvertent passage of a surreptitious provision coiled up in the folds of a complex initiative. Colo. Const. art. V, §1(5.5); Colo. Rev. Stat. Ann. § 1-40-106.5.

The Title Board considered whether Initiative #284 posed such danger due to embedded provisions that would lead to voter surprise or fraud. *See Kemper*, 274 P.3d at 582. Specifically, the issue addressed was whether use of the term “fees,” which is not defined in Initiative #284, covers a potentially broad range of subjects that would surprise voters.

“[T]he Board is not usually required to define a term that is undefined in the proposed measure. *Herpin*, 4 P.3d at 498, citing *Title v. Hufford (In re Proposed Initiative "1996-6")*, 917 P.2d 1277, 1281-82 (Colo. 1996). “Fees” is not a new or technical term, it is a common term, and in addition, Colorado courts have defined a “fee” under Colorado law. *See Tabor Found. v. Colo. Bridge Enter.*, 353 P.3d 896, 901 (Colo. App. 2014), *Barber v. Ritter*, 196 P.3d 238, 248 (Colo. 2008); and *see Herpin*, 4 P.3d at 497. It is presumed that voters know the existing law at the time they approve an initiative. *Colo. Ethics Watch v. Senate Majority Fund, LLC*, 269 P.3d 1248, 1254 (Colo. 2012); citing *Common Sense Alliance v. Davidson*, 995 P.2d 748, 754 (Colo. 2000). The Title Board is 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.” *Herpin*, 4 P.3d at 497, citing *In re Proposed Election Reform Amend.*, 852 P.2d 28, 34 (Colo. 1993).

Therefore, although the term “fees” is not defined in Initiative #284, this will not cause voters to be misinformed of the “essential concept” of the proposed initiative. *See Herpin*, 4 P.3d at 497-98. “Fees” is not a “complicated term ... left undefined such that voters would be uninformed of the possible reach of the proposed initiative.” *Earnest*, 234 P.3d at 647. The provisions of Initiative #284

are not “complex” nor “omnibus,” and the absence of a specific definition of the term “fees” does not result in a hidden or concealed provision that would cause voter surprise. *Id.*

To the extent that the effect of limiting fees may require further interpretation, such as fees assessed for multiple purposes, “in determining whether a proposed measure contains more than one subject, [the Court] may not interpret its language or predict its application if it is adopted.” *Herpin*, 4 P.3d 485, 495 (Colo. 2000); citing *Aisenberg v. Campbell (In re Title, Ballot Title & Submission Clause for Proposed Initiative 1997-98 # 64)*, 960 P.2d 1192, 1197 (Colo. 1998); *cf. In re Branch Banking Initiative*, 612 P.2d 96, 99 (Colo. 1980).

The plain language of Initiative #284 unambiguously specifies a voter approval requirement for fees assessed to fund mass transportation. Initiative #284 seeks to limit fees assessed for mass transportation to those fees approved by voters served by the transit, and this result will not surprise voters.

## **II. The Title Clearly and Accurately Describes the Central Features**

### **A. Standard of Review**

The Court grants “great deference to the board's broad discretion in the exercise of its drafting authority.” *Herpin*, 4 P.3d at 496; citing *Kelley v. Tancredo (In re Proposed Ballot Initiative on Parental Rights)*, 913 P.2d 1127, 1131 (Colo.

1996) and *In re Proposed Initiative Concerning "State Personnel Sys."*, 691 P.2d 1121, 1125 (Colo. 1984)). When reviewing a title for clarity and accuracy, the Court will only reverse the Title Board's decision if the title is "clearly misleading." *Herpin*, 4 P.3d at 496; citing *In re "State Personnel Sys."*, 691 P.2d at 1125.

**B. The Title Clearly, Accurately, and Fairly Describes Initiative #284**

Colorado statute sets forth a clear-title standard requiring the Title Board to "consider the public confusion that might be caused by misleading titles" and to "avoid titles for which the general understanding of the effect of a 'yes' or 'no' vote will be unclear." Colo. Rev. Stat. Ann. § 1-40-106(3)(b). Titles 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." *Earnest*, 234 P.3d at 648, citing *Hayes*, 218 P.3d at 356 and *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." *Id.*

Petitioner argued that the term “fees” requires further interpretation, however, the “titles and summary are intended to alert the electorate to the salient characteristics of the proposed measure. They are not intended to address every conceivable hypothetical effect the Initiative may have if adopted by the electorate.” *Herpin*, 4 P.3d at 497; citing *In re Proposed Initiative Concerning Tax Reform*, 797 P.2d 1283, 1289 (Colo. 1990).

Here, the Title provides a reasonably ascertainable expression of the short and straightforward provisions of Initiative #284. The Title captures the central features of Initiative #284: (1) prohibiting the collection of existing and new fees that fund bus and passenger rail mass transit without voter approval; and (2) requiring such voter approval from voters of the areas served by the mass transit. The Title does not “conceal some hidden intent,” therefore, it is not misleading. *See Earnest*, 234 P.3d at 648-49.

This Title clearly, accurately, and fairly describes Initiative #284 and would not be misleading to voters.

### **CONCLUSION**

For all these reasons, Respondents respectfully request that the Court affirm the actions of the Title Board for Initiative #284.

Respectfully submitted this 8th day of May, 2024

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of May, 2024, a true and correct copy of the **RESPONDENTS MICHELE HAEDRICH AND STEVEN WARD'S OPENING BRIEF** was served via the Colorado Court's E-Filing System to the following:

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