

COLORADO SUPREME COURT

2 East 14th Avenue
Denver, CO 80203

Original Proceeding Pursuant to
§ 1-40-107(2), C.R.S. (2023)
Appeal from the Ballot Title 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 No. 2024SA134

THE TITLE BOARD’S ANSWER BRIEF

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, I certify that:

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

It contains 566 words.

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.

s/ Joe Peters

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REPLY ARGUMENT

- I. **The Title Board had jurisdiction to set a title.**
 - A. **A provision that may require interpretation is still a single subject.**

Petitioner’s two single-subject arguments boil down the idea that proposed initiative #284 is too broad to be put in front of voters. *See Pet. Brief*, pp. 6-9. Yet “breadth, by itself, does not necessarily violate the single-subject requirement.” *In re Title, Ballot Title & Submission Clause for 2013-2014 #129*, 2014 CO 53, ¶ 16. To be a second subject, the term must plausibly sweep within it something incongruous with or unrelated to the primary subject. *See id.* ¶¶ 16-19. Petitioner here frets that the term “fees” might apply to any number of revenue tools—but the term has a well-established legal definition, and prejudging how that definition might apply to given fact patterns is not part of the single-subject analysis. *Id.* ¶ 18. (“[W]e do not review an initiative for artful drafting, nor can we address the merits of a proposed initiative or suggest how it might be applied if enacted.”). The types of revenue to

which proposed initiative #284 might apply is an ordinary question of interpretation, not a single-subject violation.

As part of this overbreadth argument, Petitioner argues that the proposed initiative's retroactivity amounts to a second subject. *See Pet. Brief*, pp. 3, 7. As Petitioner sees it, some voters might wish to adopt the proposed initiative's limits on transit fees prospectively but would not wish (or expect) to apply those limits to existing fees. *Id.* Petitioner does not explain, however, how this amounts to a second, unrelated subject. All legislation—indeed, all policymaking—involves line-drawing and trade-offs. Proponents seeking to prohibit sentences of life without the possibility of parole, for example, must decide whether to apply the rule retroactively, just as they must decide whether to exempt certain extreme crimes. The retroactivity is no more a second subject than the exceptions: both are merely questions of how far to extend the logic of the policy. A measure's proponents can usually increase their odds of success by trimming their ambition—or they can swing for the fences,

at the risk of striking out. A sweeping proposal isn't a second subject simply because it's sweeping. It's just a calculated risk.

II. The title set by the Board satisfies the clear title standard.

A. The initiative's broad reach is plainly stated in the title.

Following her single-subject discussion, Petitioner repeats her overbreadth theory as a clear-title argument. *See Pet. Brief*, pp. 10-12. According to Petitioner, voters will not understand that the initiative would prohibit the collection of existing fees until political subdivisions come into compliance. *Id.* p. 11. This claim is belied by the title itself, which begins with the words “prohibiting the collection of existing . . . fees.” *Record*, p 7. The title could not address Petitioner's concerns better or more directly—at least, not without venturing into conjecture and editorializing.

The “Board's duty in setting a title is to summarize the central features of a proposed initiative.” *In re Title, Ballot Title & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 24. The Board “is given discretion in resolving interrelated problems of length, complexity, and

clarity in setting a title and ballot title and submission clause.” *Id.* The current title falls well within the Board’s discretion.

CONCLUSION

The Court should therefore affirm the title set by the Board.

Respectfully submitted on this 15th day of May 2024.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S ANSWER BRIEF** upon the following parties electronically via CCEF, at Denver, Colorado, this 15th day of May 2024, addressed as follows:

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