

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED: May 9, 2024 4:29 PM</p>
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2024) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #175 (“Prohibit Certain Medical Procedures for Minors”)</p> <p><b>Petitioners:</b> Wayde Goodall and Darcy Schoening,</p> <p><b>v.</b></p>	<p><b>▲ COURT USE ONLY ▲</b></p>
<p><b>Respondents:</b> Jamie Gentry- Cunningham, Jenna Lea Candreia Clinchard, Jude Kacey Clinchard, Iris Halpern, and Dr. Lora Melnicoe,</p> <p><b>and</b></p> <p><b>Title Board:</b> Theresa Conley, Kurt Morrison, and Jeremiah Barry.</p>	<p>Case No. 2024SA117</p>
<p>PHILIP J. WEISER, Attorney General KYLE M. HOLTER, 52196 Assistant Attorney General* Ralph L. Carr Colorado Judicial Center 1300 Broadway, 6th Floor Denver, CO 80203 Telephone: (720) 508-6150 E-Mail: <a href="mailto:kyle.holter@coag.gov">kyle.holter@coag.gov</a> *Counsel of Record <i>Attorney for the Title Board</i></p>	
<p><b>THE TITLE BOARD’S ANSWER BRIEF</b></p>	

## 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 1,087 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/ Kyle M. Holter*

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Kyle M. Holter, #52196

Assistant Attorney General

## TABLE OF CONTENTS

REPLY ARGUMENT .....	1
I.    Petitioners’ single subject arguments are untimely or irrelevant.....	1
II.   Petitioners’ clear title arguments are untimely, irrelevant, and were not raised in their Petition for Review. ....	2
III.  Article V, Section 1(5.5) does not allow Petitioners’ revisions to #175 to avoid review and comment. ....	3
CONCLUSION .....	7

## TABLE OF AUTHORITIES

	PAGE(S)
<b>CASES</b>	
<i>In re Przekurat v. Torres</i> , 2018 CO 69.....	3
<i>In re Title, Ballot Title &amp; Submission Clause, &amp; Summary Adopted May 16, 1990</i> , 797 P.2d 1283 (Colo. 1990) .....	6
<i>In re Title, Ballot Title &amp; Submission Clause, &amp; Summary for 1997-98 No. 62</i> , 961 P.2d 1077 (Colo. 1998) .....	1
<i>In re Title, Ballot Title &amp; Submission Clause for 2017-2018 #4</i> , 2017 CO 57.....	4
<i>Ward v. State</i> , 2023 CO 45.....	4
<b>STATUTES</b>	
§ 1-40-107, C.R.S. ....	1, 2
<b>CONSTITUTION</b>	
Colo. Const. art. V, § 1(5.5) .....	1, 2, 3, 4, 5, 6
<b>OTHER AUTHORITIES</b>	
<i>13. Resubmissions to meet single subject, TITLE BOARD POLICIES AND PROCEDURES</i> , <a href="https://www.sos.state.co.us/pubs/elections/Initiatives/files/2021-2020TitleBoardPoliciesAndProcedures.pdf">https://www.sos.state.co.us/pubs/elections/Initiatives/files/2021-2020TitleBoardPoliciesAndProcedures.pdf</a> .....	5
<i>Only, Black’s Law Dictionary 751 (6th ed. 1990)</i> .....	6

## REPLY ARGUMENT

The Title Board correctly refused to set title on Proposed Initiative 2023-2024 #175 (#175) after the Petitioners revised the measure—adding, subtracting, and changing language—and resubmitted it without review and comment from the Legislative Council, as required by Colo. Const. art. V, § 1(5.5). None of Petitioners’ objections merit reversal of the Title Board’s decision.

### **I. Petitioners’ single subject arguments are untimely or irrelevant.**

The Title Board rests on the arguments in its opening brief regarding Petitioners’ single subject objections. *See* Title Board Op. Br. at 6–7; § 1-40-107(2), C.R.S. (setting seven-day deadline for petition to Supreme Court); *In re Title, Ballot Title & Submission Clause, & Summary for 1997-98 No. 62*, 961 P.2d 1077, 1081 (Colo. 1998) (explaining section 1-40-107(2)’s deadline runs from the time of the Board’s decision on a motion for rehearing).

**II. Petitioners’ clear title arguments are untimely, irrelevant, and were not raised in their Petition for Review.**

Petitioners’ Opening Brief contends the Board set a clear title on #175, as originally submitted, (“#175 (Original)”) during the hearing on March 6, 2024. Pet’r’s Op. Br. at 16–23. Regardless of whether this argument is correct, its resolution has no bearing on this appeal.

Although the Board set a title for #175 (Original) on March 6, 2024, on rehearing the Board concluded #175 failed to satisfy single subject and therefore did not set a title on #175 (Original). Record at 19. Petitioners did not appeal that determination, and any attempt to do so now is untimely. *See* § 1-40-107(2), C.R.S.

Instead of seeking review from this Court within seven days of rehearing, Petitioners revised and resubmitted #175. The Board never set title on #175, as resubmitted by Petitioners (“#175 (Resubmitted)”), because Petitioners’ revisions to the measure failed to qualify for the exception to review and comment under Colo. Const. art. V, § 1(5.5) (“Section 1(5.5)”). The Board never set Title on #175 (Resubmitted),

meaning there is no title for this Court to review for clarity, and Petitioners' clear title arguments are irrelevant.

Finally, Petitioners failed to identify a “clear title” issue in their Petition for Review. *See* Pet. for Review at 5 (identifying “single subject” and resubmission pursuant to Section 1(5.5) as the “issues presented for review”). Therefore, any question as to clear title is not properly before this Court. *Cf. In re Przekurat v. Torres*, 2018 CO 69, ¶ 7 n.2 (“The petition for certiorari did not raise whether summary judgment was properly granted given the undisputed facts presented, so we do not address that issue now.”).

### **III. Article V, Section 1(5.5) does not allow Petitioners' revisions to #175 to avoid review and comment.**

Petitioner argues that the Board incorrectly interprets<sup>1</sup> Section 1(5.5) in two ways. Both arguments run counter to the plain constitutional language.

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<sup>1</sup> Although “to the extent that the issues before us require [the Court] to interpret constitutional or statutory provisions,” such questions of law are subject to de novo review, where the constitutional text is “clear and

First, Petitioners argue the Title Board interprets “or” in Section 1(5.5) to mean “and.” Pet’r’s Op. Br. at 24–26. Not so. Under Section 1(5.5), a measure that contains “more than one subject . . . may be revised and resubmitted for the fixing of a proper title without the necessity of review and comment” *unless* one of two conditions applies. Colo. Const. art. V, § 1(5.5). A revised measure may be resubmitted without review and comment *unless* (1) “the revisions involve more than the elimination of provisions to achieve a single subject” *or* (2) “the official or officials responsible for the fixing of a title determine that the revisions are so substantial that such review and comment is in the public interest.” *Id.* (emphasis added). Under the plain constitutional text, the occurrence of

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unambiguous,” the Court “appl[ies] it as written.” *See Ward v. State*, 2023 CO 45, ¶ 26. Because the language of Section 1(5.5) is clear and unambiguous, this Court should apply the same deferential standard to the Board’s decision that Petitioners’ revisions “involve more than the elimination of provisions to achieve a single subject” that it does to the Board’s other decisions giving effect to the mandates of Colo. Const. art. V, § 1(5.5). *See In re Title, Ballot Title & Submission Clause for 2017-2018 #4*, 2017 CO 57, ¶ 1 (explaining the Court “draw[s] all legitimate presumptions in favor of the propriety of the Title Board’s” single-subject and clear-title decisions).



either condition—(1) *or* (2)—rules out the exception to review and comment. Indeed, it is Petitioners’ proposed reading that would change “or” to “and,” allowing resubmitted measures to qualify for Section 1(5.5)’s exception unless (1) *and* (2) occurred. *See* Pet’r’s Op. Br. at 25 (suggesting the Board should “determine whether comment is necessary in the public interest” when revised and resubmitted measures “do more than remove those provisions necessary to get to a single subject”).

Second, Petitioners argue the Title Board wrongly interprets “provision” in Section 1(5.5) to mean “any language.” Pet’r’s Op. Br. at 26. But the Board’s interpretation of “provision” is not at issue. As quoted in Petitioners’ Brief, the Board’s Policies and Procedures explain that Section 1(5.5) allows revision and resubmission of a measure determined to have more than one subject so long as the proponents “eliminate provisions *without making other changes.*” *See id.* at 25 (quoting 13. *Resubmissions to meet single subject*, TITLE BOARD POLICIES AND PROCEDURES, <https://www.sos.state.co.us/pubs/elections/Initiatives/files/20212020TitleBoardPoliciesAndProcedures.pdf> (emphasis added)).

Again, this interpretation matches the plain language of Section 1(5.5), which permits revised measures to be resubmitted without review and comment “unless the revisions involve more than the elimination of provisions to achieve a single subject.” Colo. Const. art. V, § 1(5.5). Proponents revising a measure for resubmission may *only* eliminate provisions to achieve single subject. *See Only*, Black’s Law Dictionary 751 (6th ed. 1990) (defining “only” as “solely; merely; for no other purpose; *without anything more*; exclusive; *nothing else or more*” (emphases added)). They may not make other changes.

Petitioners here concede they did not merely “eliminate provisions” but also added “clarifying language” to #175 (Resubmitted). Pet’r’s Op. Br. at 26. Petitioners also made a slew of changes to #175’s legislative declaration, supersession clause, and other provisions. Nothing within Section 1(5.5) allows such changes to escape the “constitutionally required predicate” of review and comment. *In re Title, Ballot Title & Submission Clause, & Summary Adopted May 16, 1990*, 797 P.2d 1283, 1287 (Colo. 1990).

## CONCLUSION

The Court should affirm the Title Board's refusal to set title on #175.

Respectfully submitted on this 9th day of May, 2024.

PHILIP J. WEISER  
Attorney General

*/s/ Kyle M. Holter*

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KYLE M. HOLTER, 5196\*  
Assistant Attorney General  
Public Officials Unit  
State Services Section  
Attorney for the Title Board  
\*Counsel of Record

## **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 2nd day of May, 2024, addressed as follows:

Michael W. Melito  
Melito Law LLC  
1875 Lawrence St, Ste 730  
Denver, CO 80202  
melito@melitolaw.com

Nicholas S. Bjorklund  
Birch Grove Legal PLLC  
1525 Josephine St  
Denver, CO 80206  
nick@birchgrovelegal.com

Jeffrey P. Patty  
1875 Lawrence St, Ste 730  
Denver, CO 80202  
jeff.patty@gmail.com

*Attorneys for Petitioners*

/s/ Carmen Van Pelt