

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE FOR
INITIATIVE 2021-2022 #55

PROPOSERS' RESPONSE IN OPPOSITION TO MOTION FOR REHEARING

Ann Terry and Bernie Buescher, registered electors of the State of Colorado and the proponents of Initiative 2021-2022 #55 ("Initiative #55"), through counsel, Ireland Stapleton Pryor & Pascoe, PC, hereby respond in opposition to the Motion for Rehearing filed by Natalie Menten ("Objector"), stating as follows:

The Titles Accurately Reflect the Measure; the Board Should Reject Objector's Attempt to Re-Cast the Titles in a Politically Favorable Manner Based on Objector's Unsupported and Misleading Analysis.

Initiative #55 reads, in pertinent part, as follows:

ANY VOTER INITIATIVE OR VOTER REFERENDUM THAT, BY ADJUSTMENT OF THE ASSESSMENT RATE OR MILL LEVY, AFFECTS THE PROPERTY TAX REVENUES OF A LOCAL GOVERNMENT SHALL BE DECIDED ONLY IN A LOCAL ELECTION BY INDIVIDUALS ENTITLED TO VOTE IN THAT ELECTION.

The title, as proposed by staff adopted by the Title Board, reads:

An amendment to the Colorado constitution requiring any voter initiative or voter referendum that affects the property tax revenue of a local government by modifying the property tax assessment rate or mill levy rate to be decided only in a local election.

The title tracks the concise text of the measure and is therefore indisputably accurate. Accordingly, the title satisfies the Title Board's duty to accurately and concisely summarize a measure. *Matter of Title, Ballot Title & Submission Clause, & Summary for a Petition on Sch. Fin.*, 875 P.2d 207, 210 (Colo. 1994) ("The Title Board's duty in setting titles is merely to summarize central features of initiated measure in title, ballot title and submission clause.")

Nevertheless, Objector argues that the title should deviate from the actual language of the measure and should instead merely state that the measure "prohibit[s] Citizen-Initiated Statewide Ballot Issues affecting local government property tax revenue by assessment adjustment or mill levies." By stating the title as a prohibition and omitting the reference to local elections, Objector

recasts the measure in a manner that she believes will be more politically expedient to her opposition of the measure.

The sole basis for Objector’s position is her misinterpretation of the plain language of the measure and her misleading speculation as to its interplay with the laws of local governments across Colorado. Objector asserts that the heart of the measure, i.e., that initiatives and referenda affecting local property taxes be decided in “local elections” should be left out of the title because not all local governments “allow voter initiative.”

Objector’s argument misapplies the measure, which does not state or suggest that issues affecting local property taxes shall be decided by local voter initiative—it says that they shall be decided in “local elections”, in whatever form such elections take. For instance, Objector’s position fails to account for local measures referred by local governing bodies. In fact, every local government, whether municipality, county, special district, or otherwise, must refer any proposed increase in local property taxes to a local vote as required by TABOR, thereby allowing for such measures to be decided in a local election. Colo. Const. art. X, § 20(4). Similarly, any local governing body can refer a measure proposing to decrease local property taxes to local voters to decide.

Further, in contrast to her position at the initial hearing (where she contended that no local governments allow citizen initiatives), Objector now concedes that at least every local municipality, including cities and towns, authorize local voter initiatives. Indeed, this right is provided by the Colorado Constitution. Colo. Const. art. V, § 1 (reserving initiative and referendum powers to the “registered electors of every city, town, and municipality as to all local, special, and municipal legislation of every character in or for their respective municipalities”).

But without citing any source for her data and by employing misleading statistical analysis, Objector contends that “91.76% of local governments”, including counties and special districts, do not allow voter initiatives. Objector’s unsupported blanket statements are still wrong because voter initiatives are allowed at a county level. C.R.S. § 30-11-103.5 (addressing procedures for county petitions and referred measures).¹ Perhaps more problematic, Objector’s analysis employs an apples-to-oranges comparison by treating every political subdivision in Colorado—whether a special district with a hundred registered electors or the City and County of Denver with hundreds of thousands of registered electors—as the statistical equivalent to one another.

In the end, Objector employs this misleading analysis to argue for a politically favorable title that deviates from the plain language of the measure and, by omitting any reference to local elections, incorrectly suggests to voters that they will not have any local voter control over property taxes if Initiative #55 passes. Objector is free to make this policy-based argument about the purported effects of Initiative #55 on the campaign trail, but the Title Board should not entertain her arguments as grounds to re-write the Titles. *Matter of Title, Ballot Title, and Submission*

¹ See <https://www.jeffco.us/DocumentCenter/View/11832/Citizen-Initiative-Information-Packet--> (providing instructions for county voter initiatives in Jefferson County); https://www.denvergov.org/content/dam/denvergov/Portals/778/documents/Petition%20for%20Initiated%20Ordinance%20Quick%20Guide_2019_Update.pdf (providing guide for initiated measures in the City and County of Denver); <https://www.larimer.org/clerk/elections/candidates/petition> (addressing initiative petitions for Larimer County).

Clause for 2013-2014 #89, 2014, 328 P.3d 172 (Board cannot “speculate on the potential effects of the initiative if enacted” in setting titles); *Matter of Title, Ballot Title and Submission Clause, and Summary Pertaining to Casino Gaming Initiative 1982*, 649 P.2d 303 (providing that the titles shall not “be an argument, nor likely to create prejudice, for or against the measure”) (Colo. 1982); *Matter of Title, Ballot Title & Submission Clause, & Summary for a Petition on Sch. Fin.*, 875 P.2d 207, 210 (Colo. 1994) (providing that, in setting titles, the Board “need not consider and resolve potential or theoretical disputes or determine meaning or application of proposed amendment,” nor does the Board have duty to summarize alleged interplay with other laws).

WHEREFORE, Ann Terry and Bernie Buescher respectfully request that the Title Board deny the Motion for Rehearing and affirm the title setting for Initiative #55.

Dated: February 28, 2022

Respectfully submitted,

s/ Benjamin J. Larson _____

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