

Before the Colorado Ballot Title Setting Board

Suzanne Taheri and Steven Ward, Objector/Proponents

MOTION FOR REHEARING ON INITIATIVE 2023-2024 #23

Suzanne Taheri and Steven Ward, registered electors of the State of Colorado and proponents of Initiative 2023-2024 #23 object to the Title Board's finding that the measure does not constitute a single subject which resulted in the Board's refusal to set title.

The text of Proposed Initiative #23 is short and simple. The initiative adds a clause to the Colorado Constitution declaring the right of children to access a quality education. The active portion of the initiative is in Paragraph 2:

(2) CHARTER SCHOOL APPROVAL. EVERY K-12 CHILD HAS THE RIGHT TO SCHOOL CHOICE. TO RECOGNIZE THE RIGHT TO SCHOOL CHOICE AND PROVIDE ADDITIONAL QUALITY OPTIONS, A NEW CHARTER SCHOOL MAY APPLY DIRECTLY TO A STATEWIDE CHARTER SCHOOL AUTHORIZER FOR APPROVAL.

The Title Board asserted that the declaration of a right to school choice for every child and the associated procedure for the authorization of new charter schools were separate subjects. The Proponents disagree, maintaining that the provision regarding charter schools is a means of enabling the right to school choice.

In the current initiative cycle, the Title Board set title for Proposed Initiative 2023-2024 #4 (Establishment of a New Attainable Housing Fee). In the purpose statement, this initiative purports to benefit multiple groups – “essential workers,” “property owners,” and “communities” as well as claiming that it will stop greenhouse gas emissions. It claims this initiative is for “anyone who is reasonably likely to benefit.”

Clearly, this Board sets titles for initiatives that claim to benefit broad groups, multiple groups, and communities as a whole. There is no requirement that a right set out or explained only benefit or relate to a single group – like children, in our proposed initiative.

Additionally, Proposed Initiative #3 – as many other initiatives do – sets out the “right” to be enjoyed – an “attainable housing fund” by people who meet a certain income level criteria, and then goes on with additional language providing operational mechanisms to make sure this “right” is accessible and that it will actually happen. The mechanisms are not operated by the persons with the right. Instead, they are operated by third party actors.

Similarly, our proposed initiative changes the exclusive chartering authority by *directly connecting it in our language* to the right to school choice. Children may be barred from enjoying or accessing the right to school choice by the state or a local school board if there is not operational language creating a greater ability for school choice to be accessed in Colorado. It

has not made a difference to this Board in the past – and it should not now – that the operational mechanisms must be sought by third party actors rather than by the people who hold the right.

In the previous 2021-2022 cycle, the Title Board set title for 2021-2022 #58 (Access to Natural Medicine). Notably, that initiative made the 2022 ballot. This initiative, which had a title set, purported to give Coloradans the right to use formerly banned substances. The right set out belonged to a particular group, but the initiative went on to provide a mechanism for those who wanted to exercise the right to access it. The initiative even acknowledged it included access along with the right, using the phrase, “ESTABLISHING REGULATED ACCESS.”

In the same way, our proposed initiative is pairing a right – school choice – with access to that right – a change to exclusive chartering authority. It is not this Board’s role to determine whether it likes the method of access or thinks the method of access will be effective. It is clear with initiative after initiative that this Board allows rights to be paired with access – even if the access is sought or worked out by third party groups who are not personally exercising the right.

For example, in Initiative #58, the third party group of those who distributed, acquired, or sold what the initiative called “natural medicine” were given the ability to sell a substance that was formerly illegal. They were not the ones with the “right,” but they were the ones who could help those with the “right” gain access to it.

In the same way, the third party groups of parents, corporations, and non-profits who apply to start charter schools are the ones who can help children – those with the “right” – gain access to it.

This Board ought not to use the single subject requirement to prevent a right from being accessed, even if the ability to access a right must pass through a third party. This is a natural and common part of law in Colorado, despite our single subject requirement, and this Board has allowed it time and again. There is no reason to bar it here.

Furthermore, children, under the law, have no ability to access or protect a right by themselves. They always need the legal intervention of a third party to protect and fully exercise a right. This Board ought not to bar the ability of minors to access a right by allowing plenty of other groups to include a right and access under a single subject requirement, but bar it for children – or for conservative measures.

Both Proposed Initiative #3 and 2022’s Initiative #58 were brought by liberal organizations and sponsors. This Board should not engage in viewpoint discrimination by allowing rights and access to fulfill the single subject requirement only for liberal organizations, but not for conservative ones. There should be one standard, and, in the past, that standard has clearly been that rights and access to that right together fall a single subject.

The Title Board must reconsider its single-subject determination for 2023-2024 #23 and proceed to set an appropriate ballot title.

Respectfully submitted this 12th day of April, 2023.

/s Suzanne Taheri

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