

SUPREME COURT OF COLORADO

Cordero v. Leahy

328 P.3d 136 (Colo. 2014) · Decided June 30, 2014

SUMMARY

The Colorado Supreme Court reviewed the Title Board’s titles and ballot title and submission clauses for Initiatives 2018-2014 #85, #86, and #87, which proposed statewide setback requirements for new oil and gas wells. The court held that the initiatives contained a single subject and that the titles fairly reflected their purposes without misleading voters. The court affirmed the Title Board’s actions and rejected challenges concerning takings provisions, geographic scope, the phrase “statewide setback,” title conflicts, and omission of “hydraulic fracturing.”

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Marquez; Chief Justice Rice; Justice Hobbs
JURISDICTION	Colorado
DECIDED	June 30, 2014
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioners sought review under section 1-40-107(2), C.R.S. (2013), of the Title Board's actions setting titles and ballot title and submission clauses for proposed Initiatives 2013-2014 Nos. 85, 86, and 87. The proponents filed a cross-petition challenging the Board's omission of the phrase "hydraulic fracturing" from two titles.
STANDARD OF REVIEW	The court affords all legitimate presumptions in favor of the Title Board's actions, overturns a single-subject determination only in a clear case, and reverses a title only if it is insufficient, unfair, or misleading, including because of a material omission, misstatement, or misrepresentation. The court does not review the merits, construction, or future legal effects of a proposed initiative.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Mizraim Cordero, Scott Prestidge v. Caitlin Leahy, Gregory Diamond, Title Board

TOPICS

election law

election administration

constitutional law

administrative law

PRACTICE AREAS

election law

constitutional law

administrative law

initiative and referendum

QUESTIONS PRESENTED

1. Whether Initiatives 2013-2014 Nos. 85, 86, and 87 violated Colorado's constitutional and statutory single-subject requirement.
2. Whether the provisions stating that the setback was not a taking under the Colorado Constitution were necessarily and properly connected to the initiatives' setback requirements.
3. Whether the titles were misleading because they did not address potential federal takings claims or allegedly limited the measures to state-owned oil and gas resources.
4. Whether the phrase "statewide setback" was an impermissible catch phrase.
5. Whether the titles for Initiatives 86 and 87 conflicted with the title for Initiative 85.
6. Whether the titles for Initiatives 86 and 87 were incomplete or misleading because they omitted the phrase "including those using hydraulic fracturing."

HOLDINGS

1. The proposed initiatives contain one subject: the creation of a statewide setback from occupied structures for new oil and gas wells.
2. The titles set by the Title Board satisfy the clear-title requirement because they fairly reflect the purpose of the proposed initiatives and are not misleading.
3. The titles were not misleading because they did not state that the initiatives would not bar federal takings claims.
4. The titles were not misleading because the proposed initiatives were not limited to oil and gas resources owned by the State of Colorado.
5. The phrase "statewide setback" was not an impermissible catch phrase and did not make the titles misleading.
6. The titles for Initiatives 85, 86, and 87 did not conflict because they expressly identified the different setback distances and therefore allowed voters to distinguish the measures.
7. The titles for Initiatives 86 and 87 were not incomplete or misleading because they omitted the phrase "including those using hydraulic fracturing."

KEY QUOTATIONS

"We hold that each of the Proposed Initiatives contains one subject—the creation of a statewide setback from occupied structures for new oil and gas wells." (328 P.3d at 136)

“We also hold that the titles set by the Title Board fairly reflect the purpose of the Proposed Initiatives and are not misleading.” (328 P.3d at 136)

“We therefore affirm the actions of the Title Board.” (328 P.3d at 148)

FACTUAL BACKGROUND

The proponents submitted three substantially similar alternative initiatives that would amend the Colorado Constitution to require new oil and gas wells to be located a specified distance from occupied structures. Initiative 85 proposed a 1,500-foot setback, Initiative 86 a 2,000-foot setback, and Initiative 87 a half-mile setback. Each initiative included a homeowner waiver, a provision stating that application of the setback would not constitute a taking under the Colorado Constitution, and provisions concerning oil and gas wells requiring state or local permits.

PROCEDURAL HISTORY

The proponents submitted final versions of three alternative initiatives to the Secretary of State. The Title Board set titles and ballot title and submission clauses, then modified them after rehearing by removing the phrase "hydraulic fracturing" and clarifying that the measures changed existing setback requirements. Petitioners challenged the titles and single-subject determination in the Colorado Supreme Court; the proponents filed a cross-petition concerning the omitted phrase.

DISPOSITION

affirmed

CASES CITED

- In re Title, Ballot Title & Submission Clause for 2011-2012 No. 3, 2012 CO 25, 274 P.3d 562
- In re Title, Ballot Title & Submission Clause for 2000-2010 No. 45, 284 P.3d 642
- In re Title, Ballot Title & Submission Clause, & Summary for Proposed Initiative on Parental Choice in Educ., 917 P.2d 292 (Colo. 1996)
- In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 29, 972 P.2d 257 (Colo. 1999)
- People ex rel. Elder v. Sours, 31 Colo. 369, 403, 74 P. 167, 177 (1903)
- In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000)
- In re Title, Ballot Title & Submission Clause, & Summary for Proposed Initiative "1996-17," 920 P.2d 798 (Colo. 1996) (per curiam)
- In re Title, Ballot Title & Submission Clause for 2009-2010 No. 24, 218 P.3d 350 (Colo. 2009)
- Blake v. King, 185 P.3d 142 (Colo. 2008)
- In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000)
- In re Branch Banking Initiative Adopted on Mar. 19, 1980, & Amended, on Apr. 8, 1980, 200 Colo. 85, 612 P.2d 96 (1980)

- In re Constitutional Amendment Concerning the Fair Treatment of Injured Workers, 878 P.2d 718 (Colo. 1994)
- In re Title, Ballot Title & Submission Clause for Proposed Initiative on Water Rights, 877 P.2d 321 (Colo. 1994)
- In re Title, Ballot Title & Submission Clause for 2009-2010 No. 45, 284 P.3d 642 (Colo. 2010)
- In re Proposed Initiated Constitutional Amendment Concerning the "Fair Treatment II," 877 P.2d 829 (Colo. 1994)
- In re Title, Ballot Title & Submission Clause, & Summary for Petition on Campaign & Political Fin., 877 P.2d 311 (Colo. 1994)
- In re Title, Ballot Title & Submission Clause for 2007-2008 No. 62, 184 P.3d 52 (Colo. 2008)
- In re Title, Ballot Title & Submission Clause, & Summary for 1997-98 No. 62, 961 P.2d 1077 (Colo. 1998)
- In re Title, Ballot Title & Submission Clause, & Summary for Proposed Initiative on Educ. Tax Refund, 828 P.2d 1353 (Colo. 1991)
- In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 2004, 992 P.2d 27 (Colo. 2000)
- In re Title, Ballot Title & Submission Clause, & Summary for Proposed Initiative 2001-2002 No. 43, 46 P.3d 438 (Colo. 2002)
- In re Title, Ballot Title & Submission Clause for 1997-1998 No. 80, 959 P.2d 822 (Colo. 1998)
- In re Constitutional Amendment Concerning the Fair Treatment of Injured Workers, 878 P.2d 718, 720 (Colo. 1994)