

SUPREME COURT OF COLORADO

Gonzalez-Estay v. Lamm

138 P.3d 273 (Colo. 2006) · Decided June 12, 2006

SUMMARY

The Colorado Supreme Court reviewed a challenge to the initiative title setting board's titles for Initiative #55, which would restrict Colorado governmental entities from providing non-emergency services to persons unlawfully present in the United States. The court held that the initiative violated Colorado's constitutional single-subject requirement because it grouped unrelated purposes—reducing taxpayer-funded welfare expenditures and restricting access to administrative services—under an overly broad theme. The court reversed the Board and remanded with directions to strike the title and return the initiative to its proponents.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Martinez
JURISDICTION	Colorado
DECIDED	June 12, 2006
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Original proceeding under section 1-40-107(2), C.R.S. (2005), challenging the Colorado initiative title setting board's setting of the title and ballot title and submission clause for Initiative #55.
STANDARD OF REVIEW	The court conducts limited review of the Board's title-setting decision, without addressing the merits or construing the future legal effects of the proposed initiative, but may analyze the initiative sufficiently to determine whether it violates the single-subject requirement.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Manolo Gonzalez-Estay v. Richard D. Lamm, Waldo Benavidez, Fred Elbel, Initiative Title Setting Board

TOPICS

[election law](#) [appellate procedure](#) [appellate jurisdiction](#) [constitutional law](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether claim preclusion or law of the case barred review of Initiative #55 because an earlier, nearly identical initiative had been considered by the court.
2. Whether Initiative #55 violated article V, section 1(5.5) of the Colorado Constitution and section 1-40-106.5, C.R.S. (2005), by containing multiple subjects and distinct purposes connected only by a broad theme.
3. Whether the Board erred in setting the title and ballot title and submission clause for Initiative #55.

HOLDINGS

1. Claim preclusion and law-of-the-case principles do not bar review in this special statutory proceeding, even when a proposed initiative contains language identical or nearly identical to an earlier initiative.
2. Initiative #55 violated Colorado's constitutional single-subject requirement because it grouped at least two unrelated purposes under the broad theme of restricting non-emergency government services: reducing taxpayer expenditures for welfare-related services to unlawfully present persons and restricting unrelated administrative services.
3. The Board erred in setting the title and ballot title and submission clause for Initiative #55.

KEY QUOTATIONS

“We agree that Initiative # 55 contains multiple subjects connected only by the broad theme of restricting non-emergency services.” (273)

“The theme of restricting non-emergency government services is too broad and general to make these purposes part of the same subject.” (282)

“We hold the Board erred in setting the title and remand to the Board with directions to strike the title and return the Initiative to its Proponents.” (282)

FACTUAL BACKGROUND

Initiative #55 proposed to amend the Colorado Constitution to restrict the State and local governments from providing non-emergency services to persons not lawfully present in the United States, except as mandated by federal law. The initiative did not define non-emergency services, identify the services covered, or state the purposes of the restriction, while providing for enforcement by persons lawfully residing in Colorado and implementation by the General Assembly. The court determined that the measure could restrict both taxpayer-funded medical and social services benefiting individual welfare and unrelated administrative services such as property-recording and regulatory services.

PROCEDURAL HISTORY

The Board approved the single-subject status of Initiative #55, set its title and ballot title and submission clause, and denied Gonzalez-Estay's motion for rehearing. Gonzalez-Estay petitioned the Colorado Supreme Court for

review, arguing that the initiative violated the Colorado Constitution's single-subject requirement. The court rejected claim-preclusion and law-of-the-case arguments based on an earlier, unpublished proceeding involving a prior version of the initiative, held that Initiative #55 contained multiple unrelated subjects, reversed the Board, and remanded with directions to strike the title and return the initiative to its proponents.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the Initiative Title Setting Board with directions to strike the title and return Initiative #55 to its proponents.

CASES CITED

- In the Matter of the Title, Ballot Title & Submission Clause for 2003-01 #88, No. 04SA95 (Colo. May 6, 2004)
- Welby Gardens v. Adams Cty. Bd. of Equalization, 71 P.3d 992, 999 (Colo. 2003)
- In re Proposed Initiative for “Public Rights in Waters II”, 898 P.2d 1076, 1078-80 (Colo. 1995)
- In re Proposed Initiative for 2001-02 #43, 46 P.3d 438, 439, 443, 447 (Colo. 2002)
- In re Breene, 14 Colo. 401, 404, 24 P. 3, 4 (1890)
- In re Proposed Initiative for 1997-98 Nos. 84 & 85, 961 P.2d 456, 460-61 (Colo. 1998)
- In re Proposed Initiative for 1997-98 #30, 959 P.2d 822, 823, 825 n.2 (Colo. 1998)
- In re Proposed Initiative for 2001-02 Nos. 43 & 45, 46 P.3d 438, 447 (Colo. 2002)
- In re Proposed Initiative for 1999-2000 #200A, 992 P.2d 27, 30 (Colo. 2000)
- In re Proposed Initiative for 1997-98 #63, 960 P.2d 1192, 1200-01 (Colo. 1998)
- In re Proposed Initiative for 1999-2000 #258(A) (“English Language Education in Public Schools”), 4 P.3d 1094, 1098 (Colo. 2000)
- In re Amend Tabor 25, 900 P.2d 121, 125 (Colo. 1995)
- In re Proposed Initiative for 1999-2000 #29, 972 P.2d 257, 260 (Colo. 1999)
- In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002 Nos. 21 & 22, 44 P.3d 213, 215-16 (Colo. 2002)
- State Farm Mut. Auto. Ins. Co. v. Broadnax, 827 P.2d 531, 535-36 (Colo. 1992)