

<p>SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Original Proceeding: District Court, City & County of Denver, No. 2023CV031432; Hon. David Goldberg, J.</p>	
<p>Petitioners: STEVEN WARD, JERRY SONNENBERG, ABE LAYDON, LORA THOMAS, GEORGE TEAL, KEVIN GRANTHAM, STAN VANDER WERF, CARRIE GEITNER, CAMI BREMER, LONGINOS GONZALEZ, JR., CHUCK BROERMAN, AND MARK FLUTCHER, Colorado residents, local elected officials, and registered Colorado voters; CHRISTOPHER RICHARDSON, GRANT THAYER, and DALLAS SCHROEDER, in their official capacity as Elbert County Commissioners; ADVANCE COLORADO, a Colorado nonprofit corporation; CHEYENNE COUNTY, DOUGLAS COUNTY, EL PASO COUNTY, ELBERT COUNTY, FREMONT COUNTY, KIT CARSON COUNTY, LOGAN COUNTY, MESA COUNTY, PHILLIPS COUNTY, PROWERS COUNTY, RIO BLANCO COUNTY, and WASHINGTON COUNTY, Colorado counties; and HIGHLANDS RANCH METROPOLITAN DISTRICT.</p> <p>v.</p> <p>Respondents: STATE OF COLORADO, by and through JARED S. POLIS, in his official capacity as Governor; and JENA GRISWOLD, in her official capacity as Secretary of State.</p>	<p>Case No.</p>
<p><i>Attorneys for Petitioner Advance Colorado:</i> Name: Michael L. O'Donnell (#10273) Frederick R. Yarger (#39479) Miles D. Orton (#57420) Wheeler Trigg O'Donnell LLP Address: 370 17th St., Ste. 4500 Denver, CO 80202 Tel./E-mail: 303.244.1800; odonnell@wtotrial.com; yarger@wtotrial.com; orton@wtotrial.com</p> <p><i>Attorney for Petitioners:</i> Name: Suzanne M. Taheri (#23411), West Group Law & Policy Address: 6501 E. Belleview Englewood, CO 80111 Tel./E-mail: 303.263.0844; st@westglp.com</p>	<p style="text-align: center;">PETITION FOR REVIEW UNDER C.R.S. § 1-11-203.5 AND PROPOSED BRIEFING SCHEDULE</p>

CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with all requirements of C.A.R. C.A.R. 32, including all formatting requirements set forth in these rules.

Specifically, the undersigned certifies that

The Petition contains 1,087 words.

s/ Frederick R. Yarger

Frederick R. Yarger

INTRODUCTION

Petitioners, through undersigned counsel, respectfully petition this Court under C.R.S. § 1-11-203.5(4) to review the final order of the district court dated June 9, 2023. Section 1-11-203.5(4) provides that “any appeal from an order of the district court entered pursuant to this section shall be taken directly to the supreme court” and the appeal shall be decided “as expeditiously as practicable.”

Petitioners conferred with counsel to the Governor and Secretary of State, and the parties have agreed to an expedited proposed briefing schedule to ensure this appeal may be heard in time for the Secretary of State to certify ballot content to the county clerks by the statutory deadline of September 11, 2023. *See* Sec’y of State’s Opening Br. at 2, No. 2023cv31432 (May 31, 2023) (citing C.R.S. § 1-5-203(1)).

STATEMENT OF THE CASE

A. Procedural History

On May 15, 2023, Petitioners commenced this action under C.R.S. § 1-11-203.5 in the District Court for the City and County of Denver. Petitioners’ complaint challenges the constitutionality of Senate Bill 23-303 and Proposition HH, the ballot measure referred by SB 23-303, for violations of the Colorado Constitution’s single-subject and clear title requirements. The General

Assembly passed SB 23-303 on the final day of the 2023 session. The legislation combines an assortment of disparate subjects under a single bill, including reductions in property taxes, appropriations for rental assistance, and a “de-Brucing” provision that creates a new ceiling for state revenue that grows at 1% annually, which will result in an additional \$10 billion in revenue retained by the State instead of being returned to taxpayers. A separate bill, House Bill 23-1311, adds yet another subject, changing the methodology for the distribution of TABOR refunds. All these disparate legislative enactments have either been referred to the voters through Proposition HH or, in the case of HB 23-1311, are directly conditioned on Proposition HH’s passage at this year’s election. The legislation thus impermissibly ties unpopular measures (e.g., “de-Brucing”) to the universally popular subject of property tax relief (although the reductions in property taxes are minimal), a clear example of logrolling that violates the Colorado Constitution’s single-subject requirement. Both SB 23-303 and Proposition HH also violate the clear-title requirement. The title of Proposition HH, in particular, which will appear on this year’s ballot, omits key information, including any mention of the magnitude of the proposed reductions in property taxes (which, again, are minimal); any mention of typical language alerting voters that Proposition HH is a

“de-Brucing” measure; and any mention of the provisions of HB 23-1311, even though a vote for Proposition HH is a vote for HB 23-1311.

Petitioners requested that the court declare SB 23-303 and Proposition HH void and enjoin the Secretary of State from including Proposition HH on the November 2023 statewide ballot. In the alternative, if SB 23-303 and Proposition HH are not declared void, Petitioners requested amendment of Proposition HH’s ballot title to fairly inform the voters of its contents.

The Parties agreed to an expedited briefing schedule to allow the district court to issue its ruling within the deadline set by C.R.S. § 1-11-203.5(2), which required the court to issue a decision within ten days of Respondents’ answer. Under this schedule, on May 30, 2023 and June 5, 2023, respectively, Petitioners and Respondents filed simultaneous opening and answer briefs. The Secretary of State filed only an opening brief, taking no position on the merits of Petitioners’ claims and instead urging the district court to act promptly to ensure that this litigation, including any appeals, is resolved before the 2023 ballot certification deadline.

The district court declined to set the matter for a hearing although Petitioners were prepared to submit testimony regarding the inadequacy of Proposition HH’s ballot title. Instead, on June 9, the district court entered a detailed, 21-page ruling

based on the briefs submitted by the parties. The June 9 order, attached as **Exhibit A**, denied Petitioners' requested relief but addressed all outstanding issues "for purposes of judicial expediency and economy ... so that, in the event the matter is appealed," all "issues will be ripe for consideration and the merits of the Plaintiffs' challenge can be considered by the reviewing court with all necessary dispatch." Ex. A at 4.

B. Jurisdiction

Jurisdiction in this Court is based on C.R.S. § 1-11-203.5(4), which provides in relevant part that "any appeal from an order of the district court entered pursuant to this section shall be taken directly to the supreme court, which shall decide the appeal as expeditiously as practicable."¹ Petitioners timely filed this Petition for Review within four days (two business days) from the date of the district court's final order.

Regarding the need for this appeal to be completed "as expeditiously as practicable," C.R.S. § 1-11-203.5(4), and as further detailed in the Secretary of

¹ Respondents dispute jurisdiction under Section 1-11-203.5(4) for some claims in the complaint but do not dispute that jurisdiction exists to review the ballot title for Proposition HH. The district court agreed that jurisdiction exists to review the ballot title for Proposition HH, Ex. A at 11, and made detailed rulings on other jurisdictional and merits issues to provide a complete record for this Court's review, *id.* at 4.

State's May 31, 2023 Opening Brief, the Secretary must certify statewide ballot content to the county clerks by September 11, 2023, fifty-seven days before the November election, to comply with both state law and the Uniformed and Overseas Citizens Absentee Voting Act. *See* 52 U.S.C. § 20302(a)(8); *accord* C.R.S. § 1-8.3-110(1). In light of this deadline, the Parties have again conferred on an expedited proposed briefing schedule in this Court, as they did in the district court. The parties' proposed briefing schedule is set forth below.

JOINT PROPOSED BRIEFING SCHEDULE

Petitioners have conferred with Respondents regarding a stipulated expedited briefing schedule, to allow for complete adjudication of this appeal in advance of deadlines governing the upcoming election. The Parties propose the following expedited briefing schedule:

1. Submission of simultaneous Opening Briefs on June 30, 2023.
2. Submission of simultaneous Answer Briefs on July 12, 2023.

This briefing schedule will allow submission of the case to this Court eight weeks before the Secretary of State's September 11, 2023 deadline to certify ballot content to the county clerks.

Petitioners request that oral argument be ordered after briefing is complete. Counsel for Petitioners will be prepared to appear for oral argument at any time

convenient for the Court except July 25, 2023, when counsel for Petitioners has argument scheduled in the Colorado Court of Appeals.

Dated: June 13, 2023.

Respectfully submitted,

s/ Frederick R. Yarger

Frederick R. Yarger

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- and -

s/ Suzanne M. Taheri

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Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of **PETITION FOR REVIEW UNDER C.R.S. § 1-11-203.5 AND PROPOSED BRIEFING SCHEDULE** was filed using Colorado Courts E-Filing and served via the manner indicated below this 13th day of June, 2023 to the following:

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