DISTRICT COURT, DENVER, COLORADO 1437 Bannock Denver, CO 80202 DATE FILED: December 14, 2018 4:50 PM	
Plaintiff(s): ARAPAHOE COUNTY SCHOOL DISTRICT NO. 1; SHERIDAN SCHOOL DISTRICT NO. 2; EL PASO COUNTY SCHOOL DISTRICT NO. 12; MONTE VISTA SCHOOL DISTRICT NO. C-8; JEFFERSON COUNTY SCHOOL DISTRICT NO. R-1; COLORADO ASSOCIATION OF SCHOOL BOARDS; COLORADO ASSOCIATION OF SCHOOL EXECUTIVES; CATHY KIPP; AND JASON GLASS, v. Defendant(s): STATE OF COLORADO v. Intervenor-Defendant(s): DONNELL-KAY FOUNDATION; CREEDE SCHOOL DISTRICT; KYLE FORTI; AND ELLEN GOAD.	**COURT USE ONLY** Case Number(s): 2018CV32901 Courtroom: 269

OMNIBUS ORDER RE: PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, AND DEFENDANT-INTERVENORS' MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on Plaintiff's Motion for Summary Judgment, Defendant's Motion for Summary Judgment, and Intervenor-Defendant's Motion for Summary Judgment filed on September 7, 2018; Plaintiff's Combined Response, Defendant's Response, and Defendant-Intervenor's Response, filed on September 21, 2018; Plaintiff's Reply, Defendant's Reply, and Defendant-Intervenors' Reply filed on September 28, 2018; and the hearing held on October 5, 2018 regarding those motions. The Court having reviewed the Motions, the responsive pleadings, the file and being fully advised Finds and Orders as follows:

INTRODUCTION

Plaintiffs seek a judicial declaration that Section 7 of House Bill 18-1306 violates the single subject and clear title requirements of article V, § 21, of the Colorado Constitution. House Bill 18-3016, as amended, is titled "Concerning Ensuring Educational Stability for Students in Out-of-Home Placement, and In Connection Therewith, Making an Appropriation." Plaintiffs' assert Section 7, which amends C.R.S. § 22-32-113, titled "Transportation of pupils – when," violates the single subject and clear title requirements set forth in the Colorado Constitution. Defendant and Defendant-Intervenors assert Section 7 of House Bill 18-1306 does not violate either the single subject or clear title requirements.

UNDISPUTED FACTS[1]

Legislative History

1. House Bill 18-1306 was introduced in the Colorado House of Representatives on March 20, 2018, under the title "Concerning Ensuring Educational Stability for Students in Out-of-Home Placement." Pl. Comp. ¶ 16; Def. Ans. ¶ 16; Def-Int. Ans. ¶ 16.

2. Upon amendment of the bill in the House of Representatives to include an appropriation, the title was amended to "Concerning Ensuring Educational Stability for Students in Out-of-Home Placement, and In Connection Therewith, Making an Appropriation." Pl. Comp. ¶ 16; Def. Ans. ¶ 16; Def-Int. Ans. ¶ 16.

3. The Legislative Declaration set forth in Section 1 of House Bill 18-1306 addressed the negative impacts experienced by students in foster care and other highly mobile student populations caused by frequent school transitions resulting from residential transitions. Only minor amendments elaborating on this theme occurred, and Section 1 remained consistent from introduction in the House through final passage in the Senate. Section 1 appears in the final act sent to the Governor for signature. Pl. Mot. ¶ 3; Pl. Ex. 1, p. 3; Pl. Ex. 2, pp. 3-4; Pl. Ex. 3, pp. 1-2.

[1] Neither Defendant, nor Defendant-Intervenor, disputes any statements in Plaintiffs' statement of undisputed facts. Plaintiffs' do not dispute any statements in Defendant's statement of undisputed facts. However, Plaintiff disputes

4. House Bill 18-1306 passed out of the House of Representatives and was introduced in the Senate on April 30, 2018. Pl. Comp. ¶ 18; Def. Ans. ¶ 18; Def-Int. Ans. ¶ 18.

5. On May 3, 2018, the Senate Committee on State, Veterans, and Military Affairs, added Section 7 which resulted in renumbering the two succeeding Sections. This was the only Senate amendment to House Bill 18-1306. Pl. Comp. ¶ 19; Def. Ans. ¶ 19; Def-Int. Ans. ¶ 19; Pl. Ex. 2, p. 26.

6. House Bill 18-1306 contained nine sections. Only 6 sections of House Bill 18-1306, Sections 2 through 7, modified current statutory language. Section 1 included the above referenced Legislative Declaration.

7. Section 2 modified C.R.S. § 22-32-138, titled "Out-of-home placement students--school stability, transfer, and enrollment procedures--absences--exemptions--provision of academic supports—definitions." Section 2's modifications included, but were not limited to, additional definitions to be used throughout the other sections of House Bill 18-1306, as well as introducing the creation of and the duties to be performed by the Department of Education foster care education coordinator. Pl. Ex. 3, pp. 2-10.

8. Section 3 modified C.R.S. § 22-32-138.5, titled "Educational stability grant program--application--grants--fund created--rules—report." Section 3 created a Grant Program to facilitate services and support of highly mobile students. Pl. Ex. 4, pp. 10-13.

9. Section 4 modified C.R.S. § 19-3-208 of the Children's Code, titled "Services--county required to provide--rules—definitions." Section 4 specifically refers to the modifications made by Section 2. Section 4 also provides transportation services for out-of-home placed children. Pl. Ex. 4, pp. 13-15.

10. Section 5 modified C.R.S. § 22-1-102.5, titled "Definition of homeless child." Pl. Ex. 4, pp. 15-16. Section 5 added the term "youth" in conjunction with child. *Id.* Additionally, preschool aged children were added to the definition of school-aged child. *Id.* Section 5 also expanded the definition of "homeless" to include "[a] child or youth who is sharing the housing of another due to loss of housing, economic hardship, or for similar reasons." *Id.*

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several "undisputed facts" provided in Defendant-Intervenors' statement of undisputed facts. Accordingly, the following facts are undisputed.

11. Section 6 modified C.R.S. § 22-33-103.5, titled "Attendance of homeless children and youth." Section 6 specifically refers to the modifications made by Section 5. Section 6 also addresses transportation services, as well as the roles and duties of each board of education's Homeless Education Liaison. Pl. Ex. 4, pp. 16-19.

12. Section 7 modified C.R.S. § 22-32-113, titled "Transportation of pupils – when." Section 7 amended two subsections of C.R.S. § 22-32-113, (1)(c) and (4) as follows:

> 22–32–113. Transportation of pupils—when. (1) The board of education of a school district may furnish transportation:
>
> (c) To and from public schools for any reasonable classification of pupils enrolled in the schools of the district who are ~~resident~~ **residents** of any other school district**;** ~~if the district of residence is adjacent to the district of attendance; and if the board or other governing body of the district of residence shall consent to such transportation;~~
>
> (4) A board may reimburse a parent or guardian for the expenses incurred by such parent or guardian in furnishing transportation to and from a public school or designated school vehicle stop for his or her child or children and for other pupils enrolled in the schools of the district**.** ~~but the board may not reimburse any person for transportation furnished to a pupil resident in another school district without the consent of the board or other governing body of the district of residence.~~ The amount and payment of ~~such~~ **transportation** expenses ~~shall be as~~ **are** determined by the board paying ~~such~~ **the** expenses.

Pl. Ex. 4, pp. 19-20.

13. Section 8 concerned appropriation. Section 9 referenced the effective date. Pl. Ex. 3.

14. As applies to this matter, Senate Bill 18-228, titled "Concerning Improving School Choice in Traditional Schools of a School District" was introduced during the 2018 legislative session. *Id.*

15. On May 2, 2018, Senate Bill 18-228 was "postponed indefinitely," one day before Section 7 was added to House Bill 18-1306. *Id.*; Pl. Ex. 5.

16. Section 7 is identical in all respects to Section 2 of Senate Bill 18-228. Pl. Comp. ¶ 21; Def. Ans. ¶ 21; Def-Int. Ans. ¶ 21; Pl. Ex. 4.

17. House Bill 18-1306, as amended, passed the Senate, and repassed the House on May 4, 2018. Pl. Comp. ¶ 19; Def. Ans. ¶ 19; Def-Int. Ans. ¶ 19.

18. On June 1, 2018, the Governor signed House Bill 18-1306 into law. The Governor attached a letter, addressed to the Colorado House of Representatives, endorsed the primary purpose of the legislation, but expressed concerns that Section 7 had "no apparent nexus to foster children." Additionally, the Governor examined the "single subject" requirement of article V, Section 21 of the Colorado Constitution, but took no position on whether or not the language in Section 7 was sound policy. Pl. Comp. ¶ 25; Def. Ans. ¶ 25; Def-Int. Ans. ¶ 25; Pl.'s Ex. 7.

Case History

19. On August 6, 2018, Plaintiffs filed the Complaint and a Motion for Preliminary Injunction. The Court entered a briefing schedule on August 13, 2018.

20. On August 17, 2018, Defendant-Intervenors filed an Unopposed Motion to Intervene and an Answer to Plaintiffs' Complaint. Defendant-Intervenor's Motion to Intervene was granted on August 20, 2018. Also on August 17, 2018, Defendant filed an Answer to Plaintiffs' Complaint.

21. On September 7, 2018, Plaintiffs, Defendant, and Defendant-Intervenors, filed cross Motions for Summary Judgment.

22. On September 21, 2018, Plaintiffs filed a Combined Response to Defendant and Defendant-Intervenors' Motion for Summary Judgment, Defendant filed a Response to Plaintiffs' Motion for Summary Judgment, and Defendant-Intervenors filed a Response to Plaintiffs' Motion for Summary Judgment.

23. On September 28, 2018, Plaintiffs filed its Reply, Defendant filed its Reply, and Defendant-Intervenors filed its Reply.

24. On October 5, 2018, after the matter was fully briefed and all responses and replies were filed, the Court entertained oral arguments on the pending matters.

STANDARD OF REVIEW

A trial court may enter summary judgment when there is "no genuine issue as to any material fact." C.R.C.P. 56(e). Entry of summary judgment is proper if the Court determines that one party or group of parties is entitled to judgment as a matter of law. C.R.C.P. 56(c); *Rocky Mountain Exploration, Inc. v. Davis Graham & Stubbs*, 420 P.3d 223, 229 (Colo. 2018).

When reviewing constitutional issues, statutes are presumed to be constitutional. *Colo. Union of Taxpayers Foundation v. City of Aspen*, 418 P.3d 506, 511 (Colo. 2018). To overcome that presumption the Court is required a showing of unconstitutionality beyond a reasonable doubt. *Id.* (citing *Barber v. Ritter*, 196 P.3d 238, 247 (Colo. 2008)). The plenary legislative powers of the General Assembly are "conferred by the people in their Constitution. These powers, however, are subject to express or implied restraints reflected in the Constitution itself. The legislature cannot enact a law contrary to those constitutional restraints." *Colorado Ass'n of Pub. Employees v. Bd. of Regents of Univ. of Colorado*, 804 P.2d 138, 142 (Colo. 1990) (internal citations omitted).

LEGAL ANALYSIS

I. Colorado Constitution, article V, § 21

> "No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but, if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."
>
> Colo. Const. article V, § 21.

The interpretation of article V, § 21 was first examined in three turn of the century cases that remain applicable today. *In re Title, Ballot Title & Submission Clause for Proposed Initiative 2001-02 No. 43*, 46 P.3d 438, 440 (Colo. 2002).

The Colorado Supreme Court first evaluated the single subject requirement in *In re Breene*, 24 P. 3 (Colo. 1890). The court held that the single subject requirement was

"mandatory." *Id.* The court also determined "that it should be liberally and reasonably interpreted, so as to avert the evils against which it is aimed, and at the same time avoid unnecessarily obstructing legislation." *Id.* (citing *Clair v. People*, 10 P. 799, 801 (Colo. 1886); *Dalas v. Redman*, 15 P. 397, 399 (Colo. 1887)). Finally, the court ruled "that it embraces two mandates, viz.: one forbidding the union in the same legislative bill of separate and distinct subjects, and the other commanding that the subject treated in the body of the bill shall be clearly expressed in its title." *Id.* Therefore, § 21 prohibits a single legislative act from addressing "disconnected and incongruous measures." *Id.* The court emphasized the single subject and clear title requirements by stating it was "quite as important to the official or the private citizen that he have the highest facilities for knowing the existing law, as that he have opportunity to offer criticism or suggestion upon affecting pending legislation." *Id.* at 4. Notably, the Colorado Supreme Court declared that the purpose of § 21 is designed to ensure that official or private citizens would not be "left to discover, 'coiled up in the folds'" a surreptitious provision of a complex bill. *Id*. To that end, *Breene* provided the following example of a violation of § 21: "legislation seriously modifying the mechanic's lien or exemption laws should not be hidden under a title relating exclusively to railroads." *Id.*

In *Catron v. Bd. of County Comm'rs* and *People ex rel. Elder v. Sours*, the Colorado Supreme Court expanded the single subject and clear title requirements finding that the single subject requirement prohibits disconnected and incongruous measures that have no "necessary or proper connection*." Catron v. Bd. of County Comm'rs*, 33 P. 513, 514 (Colo. 1893). A bill comprises multiple subjects if it has "at least two distinct purposes which are not dependent upon or connected with each other." *People ex rel. Elder v. Sours*, 74 P. 167, 177 (Colo. 1903).

The rationale of the single subject and clear title requirements are eloquently summarized in *Catron v. Bd. Of County Comm'rs,* "[t]he practice of putting together in one bill subjects having no necessary or proper connection, for the purpose of enlisting in support of such bill the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits, was undoubtedly one of the evils sought to be eradicated" by § 21. *Catron*, 33 P. at 514.

The modern application of § 21 serves three general purposes: (1) to notify the public and legislators of pending bills so that all may participate in the legislative process; (2) to make the

passage of each legislative proposal dependent on its own merits; and (3) to enable the governor to consider each single subject of legislation separately in determining whether to exercise veto power. *Colorado Criminal Justice Reform Coal. v. Ortiz*, 121 P.3d 288, 291 (Colo. App. 2005); *Parrish v. Lamm*, 758 P.2d 1356 (Colo. 1988); *In re House Bill No. 1353*, 738 P.2d 371 (Colo. 1987) (hereinafter "Advisory Opinion).

Defendant and Defendant-Intervenors assert House Bill 18-1306 contains one subject which is clearly expressed in its title, because each of its provisions, including Section 7, "makes it easier for foster kids to get to school." Def.'s Mtn, p. 7. Plaintiffs agree Section 7 does indeed help foster kids, as well as out-of-home placed kids, get to school. However, Plaintiffs' assert Section 7 violates the Colorado Constitution because Section 7 is overly broad in scope, and instead of targeting the specific needs of foster care and out-of-home placed kids, it subverts the transportation requirements for all children no matter the district they reside in, no matter the child's home placement, and without any criteria or collaboration with other school districts. *Pl.*'s *Mtn.*, p. 9.

A. Clear Title

Though the requirement that no bill contain more than one subject appears before the requirement that the subject "shall be clearly expressed in its title," early cases focused on the title as the most important consideration in determining a bill's subject. *Catron*, 33 P. 513 (Colo. 1893); *Breene*, 24 P. 3 (Colo. 1890).

The power of ensuring a bill has only a single subject and a clear title rests with the General Assembly, for "[t]he general assembly may, within reason, make the title of an act as comprehensive as it chooses and thus cover legislation relating to many minor but associated matters." *Zeigler v. People*, 124 P.2d 593, 596 (Colo. 1942). "In the title, particularity is neither necessary nor desirable; generality is commendable." *Driverless Car Co. v. Armstrong*, 14 P.2d 1098, 1099 (Colo. 1932). "An appropriate general title is broad enough to include all the subordinate matters considered is safer and wiser than an enumeration of several subordinate matters in the title." *Parrish v. Lamm*, 758 P.2d 1356, 1363 (Colo. 1988). "If the legislation is germane to the general subject expressed in the title; if it is relevant and appropriate to such subject, … it does not violate the clear expression requirement of section 21 of article V of the

Constitution." *Id.* (internal quotation marks omitted) (quoting *Tinsley v. Crespin*, 324 P.2d 1033, 1037 (Colo. 1958)). "The word "germane" means "closely allied," "appropriate," or "relevant."" *Id.* (quoting *Dahlin v. City & County of Denver*, 48 P.2d 1013, 1013 (Colo. 1935); *Roark v. People*, 244 P. 909, 910 (Colo. 1926)). Specific titles are considered differently than broad and comprehensive titles. *Town of Sugar City v. Bd. of Comm'rs of Crowley Cty.*, 140 P. 809, 815 (Colo. 1914) (If title had referred to elections for the removal of county seats already permanently established title would violate clear expression requirement).

There are several examples of broad and comprehensive titles in cases challenging the requirements of § 21. In *California Co. v. State,* an Act titled "An Act relating to revenue and taxation, and to amend Chapter 175, Session Laws of Colorado, 1937, as amended by all subsequent acts" was challenged as "insufficient to satisfy the requirements" of article 5, § 21. *California Co. v. State*, 348 P.2d 382, 389 (Colo. 1959). The plaintiff in that case asserted the severance tax imposed "a graduated tax on gross income" derived from the production or extraction of crude oil and natural gas. *Id.* at 384. The Colorado Supreme Court found "the title was broad, general and comprehensive subject concerning revenue and taxation." *Id.* at 389. In *Gordon v. Wheatridge Water Dist., et al.*, an Act titled "An Act for organization of water and sanitation districts and to define the purposes and powers thereof" was challenged as both a violation of the single subject and clear title requirements. *Gordon v. Wheatridge Water Dist., et al.*,109 P.2d 899, 901 (Colo. 1941). The Colorado Supreme Court determined "the contents of the entire statute merely provide for the organization and operation of districts which may perform any one or more of the defined functions," or "[i]n other words, the latter functions are merely germane or subordinate to the main object expressed in the title." *Id.*

The title of House Bill 18-1306, "Concerning Ensuring Educational Stability for Students in Out-of-Home Placement, and In Connection Therewith, Making an Appropriation," is not general, it is narrow in its focus, specifically "out-of-home" placed students. This is further explained in Section 1, which provides the purpose of House Bill 18-1306.[2] The issue of whether or not an act, with a specific title such as House Bill 18-1306, violates the single subject

[2] Set forth in Section 1, (2), "the general assembly declares that implementing a policy that ensures flexibility and cooperation between the education system, child welfare system, and families and students is necessary to ensure that students in foster care and other highly mobile student populations achieve educational success."

and clear title requirements when a section in the act may eclipse the purpose of the act, has not been addressed previously by Colorado courts. Thus, the Court has reviewed how other states have examined single subject and clear title requirements.

The Washington State Constitution contains the same single subject and clear title requirements set forth in the Colorado Constitution.[3] Washington examines whether a "title may be general or restrictive; in other words, broad or narrow, since the legislature in each case has the right to determine for itself how comprehensive shall be the object of the statute." *Washington Ass'n for Substance Abuse & Violence Prevention v. State*, 278 P.3d 632, 640 (Wash. 2012) (citing *Gruen v. State Tax Comm'n*, 211 P.2d 651, 663-64 (Wash. 1949)).

If the court finds that a title is general, the court only needs to find a "rational unity" between the general subject and the subdivisions. *Id.* (citing *State v. Grisby*, 647 P.2d 6, 9 (Wash. 1982). "[T]he existence of rational unity or not is determined by whether the matters within the body of the initiative are germane to the general title and whether they are germane to one another." *City of Burien v. Kiga*, 31 P.3d 659, 663 (Wash. 2001) (citing *Amalgamated Transit*, 11 P.3d 762, 782 (Wash. 2000)); *see also Citizens for Responsible Wildlife Mgmt. v. Washington*, 71 P.3d 644 (Wash. 2003).

However, where a general title is broad, comprehensive, and generic, a "restrictive title … is specific and narrow." *Washington State Grange v. Locke*, 105 P.3d 9, 24 (Wash. 2005). If the court finds that a title is narrow or restrictive, it "will be more carefully scrutinized." *Batey v. Washington, Employment Sec. Dep't*, 154 P.3d 266, 269 (Wash. Ct. App. 2007); *Spain v. Employment Sec. Dep't*, 185 P.3d 1188 (Wash. 2008).[4] A restrictive title "is one where a particular part or branch of a subject is carved out and selected as the subject of the legislation." *Gruen*, 211 P.2d at 664 (Wash. 1949). A restrictive title "will not be regarded" liberally, and "provisions which are not fairly within it will not be given force." *Washington v. Thorne*, 921 P.2d 514, 524 (Wash. 1996).

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[3] The Washington Constitution, article 2, § 19, requires "[n]o bill shall embrace more than one subject, and that shall be expressed in the title."

[4] Examples of bill titles judged to be restrictive: "Shall criminals who are convicted of 'most serious offenses' on three occasions be sentenced to life in prison without parole?" *Washington v. Thorne*, 921 P.2d 514 (Wash. 1996); "An Act Relating to the acquisition of property by public agencies...." *Daviscourt v. Peistrup*, 698 P.2d 1093 (Wash. 1985); "AN ACT Relating to increasing penalties for armed crimes...." *Washington v. Broadaway*, 942 P.2d 363 (Wash. 1997).

Arizona's Constitution similarly requires a single subject and clear title.[5] "The scope of the title is within the discretion of the legislature; it may be made broad and comprehensive, and in this case the legislation under such title may be equally broad; or, the legislature, if it so desires, may make the title narrow and restricted in its nature, and in such case the body of the act must likewise be narrow and restricted." *Taylor v. Frohmiller*, 79 P.2d 961, 964 (Ariz. 1938). If the title is restrictive, matters which may have been included "in the act which might with entire propriety have been embraced in one enactment with the matters indicated by the title, but which must now be excluded because the title [had] been made unnecessarily restrictive." *Id.* In *Taylor*, the court concluded that "[h]ad the title of the act stopped at the first comma, it would have been broad in its scope," but the title was narrow, and would leave "one who read the title would" think only portions of the sections listed would be amended. *Id.* at 217.

The Kansas Constitution contains similar single subject and clear title requirements.[6] Titles can be either general and comprehensive or particular and limited. *State v. Bankers' & Merchants' Mut. Ben. Ass'n,* 23 Kan. 499, 501 (Kan. 1880). An act which follows a title that is narrow and limited, "after doing all that its title intimates that it will do" must not "reach out for something entirely separate and independent." *Id.* Any "material matter in the act is not fairly indicated by its title is void." *Putnam v. City of Salina*, 17 P.2d 827, 831 (Kan. 1933).

Washington, Arizona, and Kansas require a single subject and clear title for the same legal and policy considerations as Colorado.[7] In Washington it is long held that the single subject and clear title "requirement seeks to provide notice of the bill's contents to the public and to legislators." *Washington v. Alexander*, 340 P.3d 247, 251 (Wash. Ct. App. 2014). Arizona has stated that a clear title "is to prevent the surprise and evils of omnibus bills and surreptitious legislation by requiring the title of an act to generally inform the public of the act's contents." *Arizona v. Espinosa*, 421 P.2d 322, 324 (Ariz. 1966). Kansas has held that "[t]he purpose of the title is to call attention to the contents of the bill so members of the legislature and the general

[5] "Every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title." Ariz. Const. art. IV, Pt. 2 § 13.
[6] "No bill shall contain more than one subject, except appropriation bills and bills for revision or codification of statutes. The subject of each bill shall be expressed in its title." Kan. Const. art. II, § 16.
[7] These three states are examples of many states that apply a broad title and narrow title test.

public may be fairly informed as to what the act implies." *Kansas v. Hruska*, 547 P.2d 732, 741 (Kan. 1976). "It is quite as important to the official or the private citizen that he have the highest facilities for knowing the existing law, as that he have opportunity to offer criticism or suggestion upon pending legislation." *Breene*, 24 P. at 4.

B. Single Subject

Defendant and Defendant-Intervenor urge the Court to consider *In re House Bill No. 1353*, 738 P.2d 371 (Colo. 1987) (hereinafter "Advisory Opinion") as an example of when a legislation is a violation of the single subject and clear title requirements. In the Advisory Opinion, the Colorado Supreme Court was asked to "decide whether House Bill No. 1353" violated article V, § 21. *Id.* at 371. House Bill No. 1353 was titled "Concerning An Increase In the Availability of Moneys to Fund Expenditure Priorities For the 1987 Regular Session Of the General Assembly Through Reallocation of Funds, Program Cuts, Expenditure Reductions, Use of Revenue From Unclaimed Property, and Increases in Fees." *Id.* at 371-72. House Bill No. 1353 contained forty-six sections in forty-four pages, and covered disparate subjects.[8] *Id.* at 372. House Bill 1353 contained the "common characteristic of financial impact" the "mere recitation of [the] provisions" was sufficient to compel the conclusion House Bill 1353 violated the single subject and clear title requirements. *Id.* at 373. The Colorado Supreme Court concluded that a "single common feature is not sufficient to qualify the bill as one containing no more than one subject." *Id.*

This Court does not find the Advisory Opinion instructive to the issues in this case. It is clear from the multitude of examples provided in the Advisory Opinion that House Bill 1353 contained several subjects in the forty-six sections and forty-four pages. The Advisory Opinion is an extreme example of a violation of the single subject requirement and not analogous to House Bill 18-1306's Section 7.

In *Colorado Criminal Justice Reform Coalition v. Ortiz*, 121 P.3d 288 (Colo. App. 2005) an act creating funding for both a prison and an academic facility was challenged for violation of §21. However, the act's title was specific and included both the correctional facility and the

academic facility both of which required "lease-purchase financing." *Id.* The focus of the act was the lease-purchase financing, not the two different facilities. The act was upheld. It was noted that there was no evidence in the record to support the "argument that some legislators favored only one type of facility." *Id.* at 291.

The requirements of § 21 regarding a single subject requires necessary and properly connected matters. *Parrish*, 758 P.2d at 1362. If the act tends to effect or to carry out one general object or purpose, it is a single subject under the law. *See Sours*, 74 P. at 178 (quoting *State ex rel. Hudd v. Timme*, 54 Wis. at 318, 11 N.W. at 785); *People v. Goddard*, 7 P. 301, 304 (Colo. 1885). Therefore, if an act carries out more than one general purpose, it is no longer a single subject under the law.

C. Applying § 21 to House Bill 18-1306

As set forth above, the modern application of § 21 requires an act and its title to (1) notify the public and legislators of pending bills so that all may participate; (2) to make the passage of each legislative proposal dependent on its own merits; and (3) to enable the governor to consider each single subject of legislation separately in determining whether to exercise veto power. *Colorado Criminal Justice Reform Coal. v. Ortiz*, 121 P.3d 288, 291 (Colo. App. 2005); *Parrish v. Lamm*, 758 P.2d 1356, 1362 (Colo.1988); *In re House Bill No. 1353*, 738 P.2d 371, 372 (Colo.1987) ("Advisory Opinion").

1. Notice to Public and Legislators of House Bill 18-1306

A clear title assists both the general public and legislators as to the content of a particular act. *See Lowdermilk v. People*, 202 p. 118, 119 (Colo. 1921) (the title and the subsequent provisions cover congruous legislation by which fair intendment may be said to have a proper connection). As stated above, the title of House Bill 18-1306 is "Concerning Ensuring Educational Stability for Students in Out-of-Home Placement, and In Connection Therewith, Making an Appropriation." The title is particular to out-of-home placed students. *See Armstrong*, 14 P.2d at 1099. This title is narrow, not broad, in its application, to help the

[8] The Colorado Supreme Court listed over ten different subjects in the Advisory Opinion on pages 372-73, and over

educational stability of out-of-home placed students. *See Parrish*, 758 P.2d at 1363. Because the title is narrow it will be more strictly construed. *See Town of Sugar City*, 140 P. at 815 (Colo. 1914); *Batey*, 154 P.3d at 269 (Wash. Ct. App. 2007*)*. The title suggests any modifications or changes made within the act would affect only students in out-of-home placement.

Nothing in the title suggests transportation for all students, in all school districts, without any restrictions or qualifications, would be modified or altered by Section 7 of House Bill 18-1306. Yet, Section 7 does just that. Section 7 removes all barriers for transportation without notifying either "the officer or the private citizen" of the modifications and therefore did not allow the "opportunity to offer criticism or suggestion upon" this important interest. *Breene*, 24 P. at 4. The title of House Bill 18-1306 and Section 7 are not congruous by which fair intendment may be said to have a proper connection to the title of House Bill 18-1306, and it therefore fails the Lowdermilk Test.

The purpose of House Bill 18-1306, as set forth in Section 1, is to assist in the educational success of students in foster care and other highly mobile student populations. Section 1 (1)(d). Additionally, it was declared that the "implementing a policy that ensures flexibility and cooperation between the education system, child welfare system, and families and students" was necessary for the educational success of students in foster care and other highly mobile student populations. *Id.* at (2). Section 2's modifications, additional definitions, and the creation of a foster care education coordinator, are congruous to Section 1. Section 3's modifications facilitate services and support for highly mobile students, and is congruous with Section1 and Section 2. Section 4's modifications facilitate Section 1, Section 2, and Section 3's modifications. Section 5's modification, extending the definition of "homeless child," is congruous to Section 1 through Section 4's modifications. Section 6's modification, referencing Section 5 and the creation of a Homeless Education liaison, is congruous to Sections 1 through 5's modifications. Sections 1 through 6, and Section 8 all reference and incorporated modifications made in the other Sections, and work harmoniously with the other Sections.

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six different subjects on page 372.

However, Section 7 is not congruous with Section 1. Section 1 sets forth the Legislative Declaration, focusing on the difficulties out-of-home placed students face and need for "flexibility and cooperation between the education system, child welfare system, and families and students" so those "students in foster care and other highly mobile student populations achieve educational success." Pl. Ex. 3, Section 1(2). Section 7 is overbroad. Nothing in Section 7 references or limits the specific classification of pupils described in Section 1. Furthermore, Section 7 does not require any flexibility or cooperation between the education system and the child welfare system.

Section 7 is not congruous with Section 2. Section 2 includes the creation of a foster care education coordinator and the responsibility of that coordinator to review complaints related to disputes over transportation between school districts. Pl. Ex. 3. Section 2 also tasks the child welfare education liaison with ensuring out-of-home placed students remain in the student's school of origin. *Id.* Section 7 removes the requirement for school districts to agree to transportation making the foster care education coordinator's role as liaison moot.

Section 7 is not congruous with Section 3. Section 3 creates a grant program specific to highly mobile students and nothing in Section 7 references highly mobile students. Pl. Ex. 3. Section 3 also provides that the State Board of Education to adopt rules for implementation of the grant program, including a rule for collaboration between county departments to provide transportation when needed.[9] *Id.* As with Section 2, Section 7 removes the requirement for collaboration between county departments, making any administrative rule requiring collaboration moot.

Section 7 is not congruous with Section 4. Section 4 references Section 2 and requires transportation as necessary for the out-of-home placed student to remain at his or her school of origin. Pl. Ex. 3. C.R.S. § 19-3-208(2)(b) and (2)(b)(VI) were modified to requiring that each city and county "must" provide "[s]ervices including but not limited to transportation." *Id.* at p. 14. Additionally, C.R.S. § 19-3-2018(3)(b) was modified to include that "each county department of human or social services shall coordinate with school districts" to establish plans for the necessary transportation of out-of-home placed students. *Id.* As with Sections 2 and 3,

Section 7 removes any requirements for coordination with school districts to provide transportation, making any coordination between county department of human or social services with school districts moot, yet still required under the Children's Code.

Section 7 is not congruous with Section 5. Section 5 expands the definition of a "homeless child." Pl. Ex. 3. The definition extends to include "youth" and a "child or youth who is sharing the housing of another due to loss of house, economic hardship, or similar reasons." *Id.* Nothing in Section 7 references homeless children as the classification of students served by the modifications to Section 5. Pl. Ex. 3.

Section 7 is not congruous with Section 6. Section 6 sets forth the efforts required to maintain a homeless child's school of origin. The modifications to C.R.S. § 22-33-103.5(6) includes transportation, the efforts the education liaison is to perform on behalf of the homeless child regarding transportation, and the cooperation needed between school districts if a homeless child seeks shelter in a different school district. Pl. Ex. 3.

Section 8 details appropriation, specifically to the department of human services and needy families. Neither the department of human services or needy families are referenced in Section 7. Section 7 makes no reference to any specific classification of student. Section 7 is disconnected from the appropriations set forth in Section 8.

Section 7 is not congruous to Sections 1 through 6 and Section 8 by which fair intendment may be said to have a proper connection, and therefore, it fails the Lowdermilk Test.

As in *Ortiz*, it is the subject of the act which matters.[10] The subject of House Bill 18-1306 is out-of-home placed students and efforts to ensure educational stability. Section 7's subject is all students, with no qualifiers, conditions, restrictions, or reference to out-of-home placed students. Additionally, Section 3, Section 4, and Section 6 (collectively "Transportation Sections") perform the same function Section 7 provides, but without materially changing inter-district transportation for all students. As was the concern in *Breene*, the addition of Section 7 to House Bill 18-1306 seriously modifies transportation for all students and is hidden under a title

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[9] "(VII) The education provider's collaboration with county departments to make best-interest determinations and to provide transportation, when needed;"

[10] The unifying or common objective was the capital construction and the same type of financing procedures. *Ortiz*, 121 P.3d at 291.

relating exclusively to out-of-home placed students.[11] Accordingly, Section 7 is disconnected from the title and subject of House Bill 18-1306.

Based on the above, the Court finds that House Bill 18-1306 had a narrow title and subject, and therefore finds that proper notice was not provided to either the public or the legislature prior to passage.

2. Passage on House Bill 18-1306's Own Merits

The Senate Committee on State, Veterans and Military Affairs made only one addition to House Bill 18-1306. Section 7, which was previously not addressed in House Bill 18-1306, was tacked on and the only Senate amendment to the bill. Section 7 was identical to a different bill, Section 2 of Senate Bill 18-228. Senate Bill 18-228, titled "Concerning Improving School Choice in Traditional Schools of a School District," was postponed indefinitely. The purpose of Senate Bill 18-228 was to allow open enrollment, free from "provisions that create barriers to school districts" and allow school choice through open enrollment. Pl. Ex. 4, § 1(2). As previously addressed, Senate Bill 18-228 did not pass beyond committee and Section 7 was added the next day to House Bill 18-1306.

"The prohibition against including multiple subjects in a single bill is meant to prevent abuses such as log rolling ("the practice of jumbling together in one act incongruous subjects in order to force a passage by uniting minorities with different interests when the particular provisions could not pass on their separate merits"), riders ("objectionable legislation, attached to general appropriation bills in order to force the Governor to veto the entire bill and thus stop the wheels of government or approve the obnoxious act"), and omnibus appropriation bills." *Colorado Gen. Assembly v. Lamm*, 704 P.2d 1371, 1383 (Colo. 1985).[12]

[11] See *Breene*, 24 P. at 4, example "legislation seriously modifying the mechanic's lien or exemption laws should not be hidden under a title relating exclusively to railroads."

[12] The legislative history provided to the Court evidences that Senate Bill 18-228 did not pass on its own merits and the transportation modifications were tacked onto House Bill 18-1306.

3. Enabling the Governor the Opportunity to Consider Each Subject Separately

Finally, § 21 provides the Governor the opportunity to consider each act separately in determining whether to exercise veto power. *Ortiz*, 121 P.3d at 291; *Parrish*, 758 P.2d at 1362; *Advisory Opinion* at 372. The Governor may approve or veto an entire act and cannot line item veto an act. Colo. Const. article 4, § 11. § 21 prohibits the joining of a single act to disconnected matters in furtherance of this principle. *Id.*

In consideration of how Section 7 is disconnected to the other sections in House Bill 18-1306 and with no notice regarding Section 7's change to transportation in House Bill 18-1306's title, unified with the obvious logrolling which occurred when Section 7 was tacked on to House Bill 18-1306 after the school choice bill failed in committee, and combined with the crucial purpose of House Bill 18-1306 and the Governor's inability to line-item veto, it is apparent the addition of Section 7 to a crucial bill deprived the Governor of his ability to consider each bill's subject separately.[13]

II. Constitutionality of House Bill 18-1306

As fully explained above, the Court finds and concludes beyond a reasonable doubt[14] that Section 7 of House Bill 18-1306 fails to comply with the single subject and clear title requirements of article V, § 21, and should therefore be stricken and considered void.

ORDER

Plaintiff's Motion for Summary Judgement is GRANTED. Defendant's Motion for Summary Judgment is DENIED. Defendant-Intervenors' Motion for Summary Judgment is DENIED.

Pursuant to the Colo. Const. art. V, § 21, Section 7 of House Bill 18-1306 is hereby declared to be void and of no effect.

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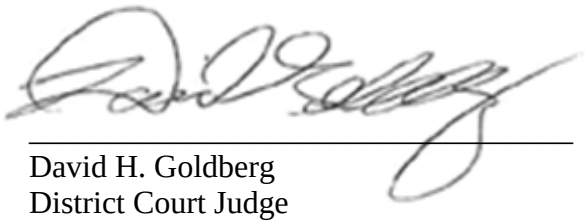
[13] *See* Pl. Ex. 7.

[14] "Reasonable doubt means a doubt based upon reason and common sense which arises from a fair and thoughtful consideration of all the evidence, or the lack of evidence, in the case. It is not a vague, speculative, or imaginary doubt, but one that would cause reasonable persons to hesitate to act in matters of importance to themselves." CJI-Civ. 4th 3:3 (2018).

DATED this 14th day of December 2018

BY THE COURT:



David H. Goldberg
District Court Judge