

COLORADO SUPREME COURT

2 East 14th Avenue
Denver, CO 80203

Original Proceeding
Pursuant to Colo. Rev. Stat. § 1-40-107(2)
Appeal from the Ballot Title Setting Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative 2023
2024 #289 ("Strict Liability for Damages from
Oil and Gas Operations")

Petitioners:

Suzanne Taheri and Steven Ward

v.

Title Board:

Theresa Conley, Jeremiah Barry, and Kurt
Morrison

Attorney for Petitioners:

Suzanne M. Taheri, #23411
WEST GROUP LAW & POLICY
6501 E. Belleview Ave, Suite 375
Englewood, CO 80111
Phone Number: (303) 263-0844
Email: st@westglp.com

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Case Number: 24SA133

PETITIONERS' OPENING BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 1,416 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

For each issue raised by the appellant, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

/s/ Suzanne Taheri
Suzanne M. Taheri, #23411
Attorney for Petitioners

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Petitioners Suzanne Taheri and Steven Ward, registered electors of the State of Colorado and the designated representatives of the proponents of Initiative 2023-2024 #289, Strict Liability for Damages from Oil and Gas Operations (“Initiative #289”), through counsel respectfully submit their Opening Brief regarding the actions of the Title Setting Board with respect to the title, ballot title, and submission clause for Initiative #289.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Did the Title Board err in finding that Initiative #289 does not contain a single subject in violation of Colo. Const. art. V, § 1(5.5.) and Colo. Rev. Stat. § 1-40-106.5?

STATEMENT OF THE CASE

This is an original proceeding pursuant to section 1-40-107(2), C.R.S. The Title Board denied title setting for Initiative #289 at its initial hearing on April 17, 2024. On April 23, 2024, Petitioners filed a Motion for Rehearing, asserting that Initiative #289 contained a single subject in compliance with Colo. Const. art. V, sec. 1(5.5). The Title Board considered the Motion for Rehearing on April 25, 2024, and denied the motion in its entirety.

SUMMARY OF THE ARGUMENT

The Title Board was incorrect in its determination that Initiative #289 contains more than a single subject.

Contemporaneously with its consideration of Initiative #289, the Title Board held hearings regarding proposed initiative 2023-2024 #270, Oil and Gas Operations Strict Liability for Damages (“Initiative #270”). Both initiatives apply strict liability to oil and gas operations, and both establish an applicable definition of strict liability. Although the measures are similar, the Title Board made conflicting determinations; Initiative #270 had a single subject while Initiative #289 did not. Although the Title Board has broad discretion, this is not justification for inconsistent decisions.

Initiative #289 contains a single subject because its provisions, including the definition of “strict liability,” are properly connected to the purpose of the measure.

The Petitioners request that the Court find Initiative #289 to contain a single subject and be remanded to the Title Board for title setting.

ARGUMENT

I. Initiative #284 Meets the Single Subject Requirement.

A. Standard of Review

The Court’s review shall "employ all legitimate presumptions in favor of the propriety of the Board's actions," however, the Title Board's single subject

determination may be overturned in a clear case. *Johnson v. Curry (In re Title, Ballot Title, & Submission Clause for for 2015-2016 #132)*, 374 P.3d 460, 464 (Colo. 2016), citing *Kemper v. Hamilton (In re Title, Ballot Title & Submission Clause for 2011-2012 #3)*, 274 P.3d 562, 565 (Colo. 2012) (quoting *Earnest v. Gorman (In re Title, Ballot Title & Submission Clause for 2009-2010 #45)*, 234 P.3d 642, 645 (Colo. 2010)). “[S]ome examination of the initiative's text is necessary in order to review the Title Board's action.” *Earnest*, 234 P.3d at 645, citing *Gonzalez-Estay v. Lamm (In re Title & Ballot Title & Submission Clause for 2005-2006 # 55)*, 138 P.3d 273, 275, 278 (Colo. 2006).

The single-subject requirement must be liberally construed to preserve and protect the right of initiative and “so as not to impose undue restrictions on the initiative process.” C.R.S. § 1-40-106.5(2); *Howes v. Hayes (In re Title, Ballot Title & Submission Clause for 1997-1998 #74)*, 962 P.2d 927, 929 (Colo. 1998); citing *Outcelt v. Golyanksky (In re Title, Ballot Title & Submission Clause, & Summary Pertaining to the Proposed Initiative on Parental Choice in Educ.)*, 917 P.2d 292, 294 (Colo. 1996).

B. Provisions Must be Related to One Object or Purpose

The Colorado Constitution requires a measure proposed by petition to contain only one subject. Colo. Const. art. V § 1(5.5). “[A] proposed measure that ‘tends to

effect or to carry out one general objective or purpose presents only one subject.”

Herpin v. Head (In re Title, Ballot Title & Submission Clause), 4 P.3d 485, 495

(Colo. 2000); citing *Title v. Bruce (In re Title, Ballot Title & Submission Clause for 1999-2000 # 25)*, 974 P.2d 458, 463 (Colo. 1999).

The single subject of Initiative #289 is to impose a strict liability standard for any damages resulting from oil and gas operations. The proposed statutory section defines the term “strict liability” for purposes of the proposed new section by applying it “where an operator, owner, or producer has been found to have acted with gross negligence or willful misconduct.” Initiative #289, Section 1 (34-60-114.1(3)(b)). The Title Board determined that the definition of strict liability, although applicable only to this proposed statute, constitutes a second subject.

Petitioners disagree with this determination. Defining a term applicable to the initiative only is comparable to an implementation detail directly tied to the initiative’s single subject and does not constitute a separate subject. *See In re Title, Ballot Title & Submission Clause, & Summary for 2005-2006 # 73*, 135 P.3d 736, 738 (Colo. 2006) (“Mere implementation or enforcement details directly tied to the initiative's single subject will not, in and of themselves, constitute a separate subject”). Numerous provisions, including definitions, may constitute a single

subject if they relate to the single purpose of the initiative. *See In re Title, Ballot Title & Submission Clause*, 907 P.2d 586, 591 (Colo. 1995).

Initiative #289 includes its definition of “strict liability” to avoid the need for, and uncertainty of, statutory construction of an essential term in the provision.

“Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.” C.R.S. § 2-4-101.

Statutes frequently define the terms used therein which may differ from the common usage of the same words. *See e.g. Griego v. People*, 19 P.3d 1, 7 (Colo. 2001)

(Statute setting forth definitions of “mental states, which differ from the common usage of these same words”) citing *Palmer v. People*, 964 P.2d 524, 526 (Colo.

1998); *see also The Pro's Closet, Inc. v. City of Boulder*, 457 P.3d 763, 767 (Colo.

App. 2019) (statutory definition of “pawnbroker” was not in line with “the traditional understanding of the term”).

A familiar example is that the commonly accepted and generally understood meaning of "person" is an "individual human being." *Culver v. Samuels*, 37 P.3d 535, 536 (Colo. App. 2001); *citing Webster's Third New International Dictionary* 1686 (1968). However, there is no perplexity provoked by statutes defining “person” to include a corporation. *See e.g. C.R.S. §§ 4-1-201(26), 6-1-102(6); 39-1-102(9).*

Statutes proposed by initiative may also define terms, and as long as they are properly connected to the purpose of the measure, such definitions do not constitute a separate subject under Colo. Const. art. V § 1(5.5). For example, the Colorado Supreme Court found that an initiative’s “expansive” definition of “local government” was necessarily and properly connected to the central purpose of the measure, and therefore “the initiative's definition of "local government" is not a separate subject.” *Bentley v. Mason (In re Title Ballot Title & Submission Clause for 2015-2016 #63)*, 370 P.3d 628, 632 (Colo. 2016); citing *Cordero v. Leahy (In re Title, Ballot Title & Submission Clause 2013-2014 #90)*, 328 P.3d 155, 161 (Colo. 2014).

This Court has determined that a new definition should be included in an initiative’s title to “correctly and fairly reflect the contents of the proposed amendment.” *In re Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 242 (Colo. 1990) (Initiative’s definition of abortion was “new and likely to be controversial,” and should be included in the title.)

The definition of “strict liability” in Initiative #289 is narrower than the meaning of the commonly used term, but that is irrelevant. The definition is necessarily and properly connected to the central purpose of the initiative as it establishes the liability for certain harm caused by oil and gas operations. Defining

the term “strict liability” in a way that is more limited than its common usage is not an unconnected purpose and does not constitute a second subject.

Just as the Title Board held that it has jurisdiction to set a title for proposed initiative 2023-2024 #270, which also defines “strict liability” for its own purposes, the Title Board has jurisdiction to set a title for Initiative #289, and, moreover, these two decisions should be consistent. Petitioners have filed a separate Petition for review of the Title Board’s single subject finding on Initiative #270 only in pursuit of a consistent single subject determination for both. Ultimately, Petitioners maintain that Initiative #289 and Initiative #270 each constitutes a single subject.

CONCLUSION

For all these reasons, Petitioners respectfully request that the Court determine that Initiative #289 contains a single subject and remand to the Title Board for title setting.

Respectfully submitted May 8, 2024,

s/Suzanne Taheri
Suzanne Taheri (#23411)
WEST GROUP
Attorney for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May, 2024, a true and correct copy of the **PETITIONERS' OPENING BRIEF** was served via the Colorado Court's E-Filing System to the following:

Michael Kotlarczyk
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203
Counsel for the Title Board

/s/ Suzanne Taheri _____

Suzanne Taheri

Duly signed original on file at West Group