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| SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203 | DATE FILED: May 16, 2024 8:41 AM |
| Original Proceeding Pursuant to Colo. Rev. Stat. §1-40-107(2) Appeal from the Ballot Title Board | |
| In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023- 2024 #290 Petitioners: Jessica Goad v. Respondents: Suzanne Taheri and Steven Ward and Title Board: Theresa Conley, Jeremiah Barry, and Kurt Morrison | <p style="text-align: center;">▲ COURT USE ONLY ▲</p> |
| <i>Attorneys for Respondent</i> Martha M. Tierney, No. 27521 TIERNEY LAWRENCE STILES LLC 225 E. 16 th Street, Suite 350 Denver, CO 80203 Telephone: 303-356-4870 Email: mtierney@tls.legal | Case No.: 2024SA135 |
| PETITIONER’S ANSWER BRIEF IN OPPOSITION TO PROPOSED INITIATIVE 2023-2024 #290 | |

CERTIFICATE OF COMPLIANCE

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

It contains 1766 words.

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

By: s/Martha M. Tierney_____

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Jessica Goad (“Petitioner”), registered elector of the State of Colorado, through her undersigned counsel, respectfully submits this Answer Brief in opposition to Proposed Initiative 2023-2024 #290 (“Initiative #290”).

SUMMARY OF THE ARGUMENT

Initiative #290 contains multiple subjects. It will attract voters from different factions to support its disparate provisions, and it will create voter surprise and fraud occasioned by the surreptitious provisions coiled up in the folds of a complex initiative. Initiative #290 prohibits both the Air Pollution Control Division from implementing its air quality control program, and the Energy and Carbon Management Commission from implementing its regulatory program in any way inconsistent with the rules governing nitrogen oxide (“NOx”) emissions adopted on December 15, 2023, unless and until the Air Pollution Control Division makes a formal written finding that oil and gas operators in the ozone nonattainment area of Colorado’s front range have not met or will not meet the 2030 NOx reduction target set forth in the state implementation plan.

The measure unites multiple subjects under its purported subject of rules governing NOx emissions from oil and gas operations. In so doing, the Initiative improperly divests these two governmental authorities of their existing statutory and regulatory power under the guise of keeping the NOx rule static.

Initiative #290 sets up the kind of log rolling that the single subject requirement is designed to prevent. A voter going to the polls in the upcoming general election might favor leaving the NOx rule as is until there is a finding that oil and gas operators in the ozone nonattainment area have not met or will not meet the 2030 emissions targets, while being opposed to depriving the Air Pollution Control Division from implementing its air quality control program, and the Energy and Carbon Management Commission from implementing its regulatory program, or vice versa.

Initiative #290 also presents the type of voter surprise that the single subject requirement forbids. Voters confronted with this ballot initiative purporting to concern rules governing NOx emissions from oil and gas operations might be surprised to learn that the initiative, if adopted, would deprive the Air Pollution Control Division from implementing its air quality control program, and the Energy and Carbon Management Commission from implementing its regulatory program.

The Title Board further set a misleading title that does not clearly provide a general understanding of the effect of a "yes" or "no" vote to the voting electorate.

This Court should find that Proposed Initiative 2023-2024 #290 violates the single subject requirement, or in the alternative, that the title as set by the Title

Board does not correctly and fairly express the true intent and meaning of the measure.

ARGUMENT

I. **Initiative #290 Contains Multiple Subjects.**

Initiative #290 violates the single subject requirement. Initiative #290 prohibits both the Air Pollution Control Division from implementing its air quality control program, and the Energy and Carbon Management Commission from implementing its regulatory program in any way inconsistent with the rules governing NOx emissions adopted on December 15, 2023, unless and until the Air Pollution Control Division makes a formal written finding that oil and gas operators in the ozone nonattainment area of Colorado's front range have not met or will not meet the 2030 NOx reduction target set forth in the state implementation plan. In so doing, the Initiative improperly divests these two governmental authorities of their existing statutory and regulatory power under the guise of keeping the NOx rule static.

In prior ballot title cases, this Court has reversed the Title Board's action in setting titles for initiatives affecting substantial rearrangement of existing governmental powers, just as Initiative # 284 proposes. For example, in *In re Initiative for 1997-1998 # 64*, 960 P.2d 1192, 1196 (Colo. 1998), the Court

reviewed an initiative which proposed substantial changes to the judicial branch of state government. 960 P.2d at 1194. Initiative # 64 dealt generally with qualifications of judicial officers, but it also sought to divest the Judicial Discipline Commission -- the governmental body charged with investigating and enforcing the Colorado Code of Judicial Conduct -- of its regulatory and remedial powers. *Id.* at 1199. The Court held that Initiative # 64's proposed changes to the commission were a separate subject, because the power of the commission is derived from a separate and independent constitutional basis, from the judicial power vested in the courts. *Id.*; see also *In re Initiative for 1999-2000 No. 29*, 972 P.2d 257, 262 (Colo. 1999) (discussing and applying *In re # 64*, 960 P.2d at 1199).

Initiative #290 sets up the kind of log rolling that the single subject requirement is designed to prevent. The prohibition against multiple subjects "discourages placing voters in the position of voting for some matter they do not support to enact that which they do support." *In re Initiative for 2005-2006 # 55*, 138 P.3d 273, 282 (Colo. 2006). A voter going to the polls in the upcoming general election might favor leaving the NOx rule as is until there is a finding that oil and gas operators in the ozone nonattainment area have not met or will not meet the 2030 emissions targets, while being opposed to depriving the Air Pollution Control Division from implementing its air quality control program, and the

Energy and Carbon Management Commission from implementing its regulatory program, or vice versa.

Initiative #290 also presents the type of voter surprise that the single subject requirement forbids. Voters confronted with this ballot initiative purporting to concern rules governing NOx emissions from oil and gas operations might be surprised to learn that the initiative, if adopted, would deprive the Air Pollution Control Division from implementing its air quality control program, and the Energy and Carbon Management Commission from implementing its regulatory program.

Discovery of this second purpose is revealed only through a close reading of the initiative and an appreciation of how its sections interrelate. Such subterfuge is precisely what the constitutional prohibition against multiple subjects was designed to prevent. *Howes v. Brown*, 235 P.3d 1071, 1079 (Colo. 2010). The Court should find that Initiative #290 violates the single subject requirement to avoid this improper surprise.

Initiative #290 contains multiple subjects in violation of the single subject requirement.

II. The Title Does Not Correctly and Fairly Express Initiative #290's True Intent and Meaning.

The title of Initiative #290 is misleading and will not allow voters to make an informed decision about the initiative's true intent and meaning. Titles and submission clauses should "enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal." *In re Title, Ballot Title & Submission Clause for Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 242 (Colo. 1990).

Here, due to the hidden features of the measure coiled up in its folds, the title to Initiative #290 should clearly tell voters how the initiative impacts existing air quality in the nonattainment area, and how the measure divests from governmental authorities their role in implementing air quality and regulatory programs. "The purpose of reviewing an initiative title for clarity parallels that of the single-subject requirement: voter protection through reasonably ascertainable expression of the initiative's purpose." *Outcalt v. Bruce (In re Initiative for 1999-2000 # 37)*, 977 P.2d 845, 846 (Colo. 2000).

Here, perhaps because the text of the proposed initiative is difficult to comprehend, the title will not be clear to the voters. As written, the title suggests that this measure reduces NOx emissions from oil and gas operations, when it does

exactly the opposite. In particular, the title fails to convey to voters the change in the status quo on the state's ability to comply with the Clean Air Act, and how the initiative decreases the state's ability to reduce NOx emissions to bring the Denver metro area into attainment. As drafted, the title does not allow voters to understand the effect of a yes or no vote. *See In re Petition Procedures*, 900 P.2d 104, 108 (Colo. 1995).

CONCLUSION

Respondent respectfully requests the Court find that Proposed Initiative 2023-2024 #290 violates the single subject requirement, or in the alternative that the title as set by the Title Board does not correctly and fairly express the true intent and meaning of the measure.

Respectfully submitted this 15th day of May 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May 2024 a true and correct copy of the foregoing **PETITIONER'S ANSWER BRIEF IN OPPOSITION TO PROPOSED INITIATIVE 2023-2024 #290** was filed and served via the Colorado Courts E-Filing System to the following:

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