

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 #290

Petitioner:
 Jessica Goad

v.
Respondents:
 Suzanne Taheri and Steven Ward,
 and
 Title Board: Theresa Conley, Jeremiah
 Barry, and Kurt Morrison

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and Steven Ward:**
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Case Number: 2024SA135

**RESPONDENTS SUZANNE TAHERI AND STEVEN WARD’S
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 1,770 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
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Respondents Suzanne Taheri and Steven Ward, registered electors of the State of Colorado and the designated representatives of the proponents of proposed initiative 2023-2024 #290 (“Initiative #290”), through counsel respectfully submit their Opening Brief in support of the title, ballot title, and submission clause (the “Title”) set by the Title Board for Initiative #290.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Did the Title Board err in finding that Initiative #290 properly contains a single subject in conformance with of Colo. Const. art. V, § 1(5.5) and Colo. Rev. Stat. § 1-40-106.5?
2. Did the Title Board err in setting a clear title for Initiative #290?

STATEMENT OF THE CASE

This is an original proceeding pursuant to section 1-40-107(2), C.R.S. Respondents filed Initiative #290 concerning state implementation of nitrogen oxide emissions regulations with the Secretary of State on March 22, 2024. Initiative #290 would prohibit the state from implementing its regulatory programs in a way that is inconsistent with the rules adopted in December 2023 or changing those rules without a written finding that that collectively oil and gas operators in the Denver metro front range will reach nitrogen oxide emissions goals by 2030. This prohibition essentially codifies the existing rules regarding nitrogen oxide

emissions, prohibiting administrative changes to the current compliance scheme and providing a level of certainty to a highly regulated industry for a period of time.

The Title Board conducted its initial public hearing and set the Title for Initiative #290 on April 17, 2024. Petitioner filed a motion for rehearing on April 24, 2024. The Title Board considered the motion at its April 25, 2024, hearing where the Title Board granted the motion only to the extent that it made a change to the title and ballot title and denied the remainder of the motion.

Accordingly, the Title Board set the final Title for Initiative #290 as:

“A change to the Colorado Revised Statutes concerning the rules governing nitrogen oxide emissions from oil and gas operations adopted by the state in December 2023, and, in connection therewith, prohibiting the state from implementing its regulatory programs in a way that is inconsistent with the rules or changing the rules without a written finding that collectively oil and gas operators in the Denver metro front range will not reduce the nitrogen oxide emissions by 50% by 2030 as set by 2017 baseline emissions established in the state air pollution implementation plan.”

Petitioner seeks review of the Title Board’s action under Colo. Rev. Stat. § 1-40-107(2) based on single subject and clear title claims.

SUMMARY OF THE ARGUMENT

The Title Board was correct in determining that Initiative #290 contains a single subject, which is a prohibition on administrative changes to nitrogen oxide

emissions regulations unless emissions goals will not be met. The provisions of Initiative #290 are properly related to this subject and the Title Board correctly found a single subject in accordance with the law.

The Title Board appropriately exercised its broad discretion drafting the title for Initiative #290. Accordingly, the Title set by the Title Board fairly and accurately sets forth the central features of Initiative #290 as required by statute.

For these reasons, the decisions of the Title Board should be affirmed.

ARGUMENT

I. Initiative #290 Meets the Single Subject Requirement

A. Standard of Review

The Court's role in reviewing Title Board actions is limited, and it must "employ all legitimate presumptions in favor of the propriety of the Title Board's actions and ...overturn its finding that an initiative contains a single subject only in a clear case." *Milo v. Coulter (In re Title, Ballot Title & Submission Clause for 2013-2014 #129)*, 333 P.3d 101, 103-04 (Colo. 2014); citing *Kemper v. Hamilton (In re Title, Ballot Title & Submission Clause for 2011-2012 #3)*, 274 P.3d 562, 565 (Colo. 2012); *Earnest v. Gorman (In re Title, Ballot Title & Submission Clause for 2009-2010 #45)*, 234 P.3d 642, 645 (Colo. 2010). The Court must "also liberally construe the single subject requirement to 'avoid unduly restricting the

initiative process.” *Id.*, quoting *Hayes v. Lidley (In re Title, Ballot Title and Submission Clause for 2009-2010 #24)*, 218 P.3d 350, 353 (Colo. 2009).

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). “To run afoul of the single-subject requirement, the proposed initiative must have at least two distinct and separate purposes that are not dependent upon or connected with each other.” *Earnest*, 234 P.3d at 645, citing *Hayes*, 218 P.3d at 352.

“[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 #290 is to allow the nitrogen oxide emissions regulations adopted in December 2023 to continue without administrative changes unless there is a finding that nitrogen oxide emissions goals will not be met by 2030. The provisions of Initiative #290 carry out this single purpose, and there is no separate purpose not dependent upon or connected to the purpose of prohibiting administrative changes to the nitrogen oxide emissions regulations as provided.

C. Initiative #290 Does Not Implicate Dangers to be Prevented by Single Subject Requirement

The purpose of the single-subject requirement for proposed voter initiatives is to prevent two “dangers” of multi-subject initiatives: first, it prevents the enactment of combined measures that would fail on their individual merits; second, it protects against fraud and surprise occasioned by the inadvertent passage of a surreptitious provision coiled up in the folds of a complex initiative. Colo. Const. art. 5, § 1(5.5); Colo. Rev. Stat. Ann. § 1-40-106.5.

The Title Board considered whether Initiative #290 posed the danger of voter surprise due to the potential impacts, such as federal emissions compliance. However, the Court’s “limited role in this process prohibits ... addressing the merits of a proposed initiative or suggesting how an initiative might be applied if enacted.” *Milo*, 333 P.3d 101, 104; citing *In re Title v. Respondents: Dennis Polhill & Douglas Campbell, Proponents, & Title (In re Title, Ballot Title & Submission Clause for Proposed Initiative 2001-2002 #43)*, 46 P.3d 438, 443 (Colo. 2002). “In determining whether a proposed measure contains more than one subject, [the Court] may not interpret its language or predict its application if it is adopted. *Herpin*, 4 P.3d 485, 495 (Colo. 2000); citing *Aisenberg v. Campbell (In re Title, Ballot Title & Submission Clause for Proposed Initiative 1997-98 # 64)*, 960

P.2d 1192, 1197 (Colo. 1998); *cf. In re Branch Banking Initiative*, 612 P.2d 96, 99 (Colo. 1980). Concerns about the effects of an initiative, valid or not, are irrelevant to whether the proposed initiative contains a single subject. *Milo*, 333 P.3d at 105, citing *Kemper*, 274 P.3d at 568 n.2. Therefore, how Initiative #290 might be affected by federal law or interact with other state requirements is not relevant to the single subject determination.

Initiative #290 itself is brief and direct, not “complex” nor “omnibus,” and there is no hidden or concealed provision that would cause voter surprise. *Earnest*, 234 P.3d at 647.

Initiative #290 unambiguously prohibits administrative changes to nitrogen oxide emissions regulations adopted in December 2023 unless there is a finding that nitrogen oxide emissions goals will not be met by 2030. It contains no surreptitious provision that would surprise voters.

II. The Title Clearly and Accurately Describes the Central Features

A. Standard of Review

The Court grants “great deference to the board's broad discretion in the exercise of its drafting authority.” *Herpin*, 4 P.3d at 496; citing *Kelley v. Tancredo (In re Proposed Ballot Initiative on Parental Rights)*, 913 P.2d 1127, 1131 (Colo. 1996) and *In re Proposed Initiative Concerning "State Personnel Sys."*, 691 P.2d

1121, 1125 (Colo. 1984)). When reviewing a title for clarity and accuracy, the Court will only reverse the Title Board's decision if the title is "clearly misleading." *Herpin*, 4 P.3d at 496; citing *In re "State Personnel Sys."*, 691 P.2d at 1125.

B. The Title Clearly, Accurately and Fairly Describes Initiative #290

Colorado statute sets forth a clear-title standard requiring the Title Board to "consider the public confusion that might be caused by misleading titles" and to "avoid titles for which the general understanding of the effect of a 'yes' or 'no' vote will be unclear." Colo. Rev. Stat. Ann. § 1-40-106(3)(b). Titles 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." *Earnest*, 234 P.3d at 648, citing *Hayes*, 218 P.3d at 356 and *In re Title, Ballot Title & Submission Clause for Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 242 (Colo. 1990)). A title need not be "the best possible statement of the proposed measure's intent." *Herpin*, 4 P.3d at 496 (Colo. 2000), citing *In re Mineral Prod. Tax Initiative*, 644 P.2d 20, 25 (Colo. 1982). Rather, the Court reviews "titles set by the Title Board with great deference, and will only reverse the Board's decision if the titles are insufficient, unfair, or misleading." *In re Title, Ballot Title & Submission Clause, & Summary for 2005-2006 # 73*, 135

P.3d 736, 740 (Colo. 2006), citing *In re Ballot Title for 1999-2000 # 256*, 12 P.3d 246, 254 (Colo. 2000).

Furthermore, titles “are intended to alert the electorate to the salient characteristics of the proposed measure... [not] to address every conceivable hypothetical effect the Initiative may have if adopted by the electorate.” *Herpin*, 4 P.3d at 497; citing *In re Proposed Initiative Concerning Tax Reform*, 797 P.2d 1283, 1289 (Colo. 1990).

For purposes of a voter determining whether to vote "yes" or "no," the Title for Initiative #290 clearly provides that it prohibits administrative changes to nitrogen oxide emissions regulations adopted in December 2023 unless there is a finding that nitrogen oxide emissions goals will not be met by 2030. It is not likely to mislead voters as to the initiative's purpose or effect, or conceal a hidden intent. *See Earnest*, 234 P.3d at 648-49; citing *Hayes*, 218 P.3d at 356. Any hypothetical effects need not be address in the Title.

This Title clearly, accurately, and fairly describes Initiative #290 and would not be misleading to voters.

CONCLUSION

For all these reasons, Respondents respectfully request that the Court affirm the actions of the Title Board for Initiative #290.

Respectfully submitted this 8th day of May, 2024

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CERTIFICATE OF SERVICE

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

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