

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 #270 (“Oil and Gas Operations Strict
Liability for Damages”)

▲ COURT USE ONLY ▲

Petitioners:

Steven Ward and Suzanne Taheri

v.

Respondents:

Jessica Goad and Alicia Ferrufino-
Coqueugniot

and

Title Board: Theresa Conley, Jeremiah
Barry, and Kurt Morrison

Case Number: 24SA132

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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 1,504 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.

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Petitioners Steven Ward and Suzanne Taheri, registered electors of the State of Colorado, through undersigned counsel, respectfully submit their Opening Brief regarding the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Initiative 2023-2024 #270, Oil and Gas Operations Strict Liability for Damages (“Initiative #270”).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Did the Title Board err in finding that Initiative #270 contains a single subject under Colo. Const. art. V, §1(5.5) and Colo. Rev. Stat. § 1-40-106.5?
2. Did the Title Board err in setting a title for Initiative #270 that omits critical elements of the measure and will mislead voters?

STATEMENT OF THE CASE

This is an original proceeding pursuant to section 1-40-107(2), C.R.S. The Title Board determined that Initiative #270 had a single subject and set a title at its hearing on April 17, 2024. On April 23, 2024, Petitioners filed a Motion for Rehearing, alleging that Initiative #270 contained multiple subjects, contrary to Colo. Const. art. V, sec. 1(5.5), and that the title set was unclear and misleading because it omitted important features of Initiative #270.

The Title Board considered the rehearing motion at its April 26, 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 ballot title and submission clause for Initiative #270 as:

“A change to the Colorado Revised Statutes concerning holding any oil and gas operator, owner, or producer strictly liable for any damages including personal injury, property damage, or environmental harm that result from oil and gas operations without regard to fault, negligence, or intent.”

SUMMARY OF THE ARGUMENT

The Title Board contemporaneous considered two initiatives proposed for the 2024 election that would impose strict liability for oil and gas operations, this Initiative #270 and proposed initiative 2023-2024 #289 (“Initiative #289”). Both initiatives would apply strict liability to oil and gas operations, and both establish an applicable definition of strict liability. However, the Title Board was inconsistent in determining that Initiative #270 contained a single subject, but that Initiative #289 contained multiple subjects.

Petitioners, who are also the proponents and petitioners seeking review of Initiative #289, are requesting that the Court find Initiative #289 to have a single subject and be remanded to the Title Board for title setting, consistent with the Title Board's decision regarding Initiative #270. However, if the Court finds that Initiative #289 has more than one subject, Petitioners request that this Initiative #270 also be found in violation of the single subject requirement.

ARGUMENT

I. If Initiative #289 Violates the Single Subject Requirement, Initiative #270 Also Violates 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 *Outcalt 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 proposed single subject of Initiative #270 is to impose a strict liability standard for any damages resulting from oil and gas operations. The proposed statutory section includes five specific definitions, including the term “strict

liability” which is defined to mean “liability without regard to fault, negligence, or intent.” Initiative #270, Section 1 (34-60-114.1(3)(e)).

If the definition of “strict liability” in Initiative #289 constitutes a second subject, this definition does as well. Both initiatives define a term to be applied in implementing the initiative. Although the definitions differ, they are equally connected to the central purpose of each initiative, and therefore cannot be distinguished in terms of single subject analysis. Petitioners have filed a separate Petition for review of the Title Board’s single subject finding on Initiative #289 maintaining that it constitutes a single subject. Petitioners request that the petitions for review of Initiative #289 and Initiative #270 be considered together, and that the Court resolve the contradictory decisions to ensure predictability and consistency in the title setting process.

II. The Title does not fairly, clearly, accurately, and completely describes the central features and would mislead voters.

A. Standard of Review

An initiative title must “fairly summarize the central points” of the proposed measure. *In re Title, Ballot Title & Submission Clause, & Summary for Petition on Campaign & Political Fin.*, 877 P.2d 311, 315 (Colo. 1994). Titles must be “fair, clear, accurate, and complete” but are not required to “set out every detail of the

initiative.” *In the Matter of the Title, Ballot Title & Submission Clause, & Summary for 2005-2006 # 73*, 135 P.3d 736, 740 (Colo. 2006). This Court will review titles set by the Board “with great deference” but will reverse the Board where “the titles are insufficient, unfair, or misleading.” *Id.*

B. The Title is misleading because it fails to inform voters that Initiative #270 imposes liability regardless of the exercise of reasonable care or adherence to industry best practices.

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." C.R.S. § 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 v. Lidley (In re Title, Ballot Title, & Submission Clause for 2009-2010)*, 218 P.3d 350 at 356 (Colo. 2009) 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)).

“Strict liability” is a commonly used term in the law, but does not have one universally applicable established definition. See C.R.S. § 18-1-502 (defining

"strict liability" for criminal conduct); *Union Supply Co. v. Pust*, 583 P.2d 276, 282 n.5 (Colo. 1978) (The court is “fully aware of the split in authority on the definition of strict liability” for manufacturers); *Boles v. Sun Ergoline, Inc.*, 223 P.3d 724, 726 (Colo. 2010) (citations omitted) (In terms of strict liability for products, the general assembly “over time provided further limiting definitions and defenses applicable only to product liability actions.”); *Bradford v. Bendix--Westinghouse Auto. Air Brake Co.*, 517 P.2d 406, 411 (Colo. App. 1973) (defining doctrine of strict liability consistent for torts).

This meaning of “strict liability” is important to the central purpose of Initiative #270, and the public should be informed of its meaning in the title. *In re Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d at 242. To enable the public to determine intelligently whether to support or oppose this strict liability proposal, the Title should inform voters that liability will apply regardless of the exercise of reasonable care or adherence to industry best practices. This Title fails to clearly and accurately describes Initiative #270 and would be misleading to voters.

CONCLUSION

For all these reasons, Petitioners respectfully request that the Court make consistent decisions regarding its single subject finding for Initiative #270 and

Initiative #289. If Initiative #270 is found to contain a single subject, Petitioners further request that the Court find that the title set by the Board is legally flawed and direct the Title Board to correct the title to avoid misleading voters.

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 MICHELE HAEDRICH AND STEVEN WARD'S OPENING BRIEF** was served via the Colorado Court's E-Filing System to the following:

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