

**SUPREME COURT, STATE OF COLORADO**  
**2 East 14<sup>th</sup> Avenue**  
**Denver, Colorado 80203**

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 #270

**Petitioners:** STEVEN WARD AND SUZANNE  
TAHERI

v.

**Respondents:** JESSICA GOAD AND ALICIA  
FERRUFINO-COQUEUGNIOT

and

**Title Board:** THERESA CONLEY, JEREMIAH  
BARRY, and KURT MORRISON

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Case No.: 2024SA132

**RESPONDENTS' OPENING BRIEF IN SUPPORT OF  
PROPOSED INITIATIVE 2023-2024 #270**

## 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 2881 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 and Alicia Ferrufino-Coqueugniot (jointly “Proponents” or “Respondents”), registered electors of the State of Colorado, through their undersigned counsel, respectfully submit this Opening Brief in support of the title, ballot title and submission clause (jointly, the “Title”) that the Title Board set for Proposed Initiative 2023-2024 #270 (“Initiative #270”).

### **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

1. Whether the Title Board correctly determined that proposed initiative 2023-2024 #270 contains a single subject.
2. Whether the Title Board set a clear title for proposed initiative 2023-2024 #270.

### **STATEMENT OF THE CASE**

Jessica Goad and Alicia Ferrufino-Coqueugniot proposed Initiative #270. A review and comment hearing was held before representatives of the Offices of Legislative Council and Legislative Legal Services on April 4, 2024. Thereafter, Proponents submitted final versions of Initiative #270 to the Secretary of State for the next Title Board hearing.

The Title Board held an initial hearing on April 17, 2024, at which time it found that Initiative #270 contained a single subject and set a title. On April 23, 2024, Petitioners Suzanne Taheri and Steven Ward filed a Motion for Rehearing,

alleging that Initiative #270 contained multiple subjects, and that its title was flawed. The Title Board held the rehearing on April 26, 2024, at which time it maintained that the measure contained a single subject and granted the Motion for Rehearing only insofar as it made minor changes to the title. The title set by the Title Board is as follows:

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.

Petitioners timely filed an appeal to this Court.

### **SUMMARY OF THE ARGUMENT**

The Title Board properly exercised its broad discretion in setting title on Initiative #270. Initiative #270 contains a single subject: holding oil and gas operators strictly liable for damages resulting from oil and gas operations. The remaining provisions, including the definition of strict liability are implementing and enforcement details that flow from the measure's single subject.

Petitioners raise two single subject objections. First, that the measure changes the definition of "strict liability" and because the Title Board rejected Petitioners own Initiative #289 for creating a new definition of strict liability that required gross negligence or willful misconduct – the opposite of the common

understanding and dictionary definitions of the term - Initiative #270 should also fall to the same fate. This argument fails because Initiative #270's definition of strict liability is consistent with dictionary definitions and common understanding of the term, and the Title Board found that it could properly set a title that would not confuse voters for Initiative #270.

Second, that the measure violates the single subject requirement because it modifies the contributory negligence doctrine and other common tort defenses. But these concerns about the effects that Initiative #270 could have on other laws or defenses or its application if enacted are not appropriate for review at this stage.

Petitioners' clear title objections fare no better. Petitioners object that the title fails to inform voters that the measure imposes strict liability regardless of the exercise of reasonable care, adherence to industry best practices, or the intentional or negligence of a plaintiff. But these concerns do not override the discretion of the Title Board to draft a brief title that captures the major features of the measure.

The Title Board is only obligated to fairly summarize the central points of a proposed measure and need not refer to every nuance and feature of the proposed measure. While a title must be fair, clear, accurate and complete, it is not required to set out every detail of an initiative.



Accordingly, there is no basis to set aside the Title, and the decision of the Title Board should be affirmed.

## **ARGUMENT**

### **I. The Initiative Complies with the Single Subject Requirement.**

#### **A. Standard of Review and Preservation.**

Article V, section 1(5.5) of the Colorado Constitution, and section 1-40-106.5(1)(a), C.R.S. state that a proposed initiative must be limited to “a single subject which shall be clearly expressed in its title.” “A proposed initiative violates this rule if its text relates to more than one subject, and has at least two distinct and separate purposes not dependent upon or connected with each other.” *In re Initiative for 2011-2012 #3*, 2012 CO 25, ¶ 9. When reviewing a challenge to the Title Board’s decision, this Court “employ[s] all legitimate presumptions in favor of the propriety of the Title Board’s action.” *In re Initiative for 2013-2014 #89*, 2014 CO 66, ¶ 8. The Court will “only overturn the Title Board’s finding that an initiative contains a single subject in a clear case.” *Id.*

The Court does “not address the merits of the proposed initiative” or “suggest how it might be applied if enacted.” *In re Initiative for 2019-2020 #3*, 2019 CO 57, ¶ 8. Nor can the Court “determine the initiative's efficacy, construction, or future application, as these are matters properly considered if and

after the voters approve the initiative.” *In re Initiative for 2015-2016 #63*, 2016 CO 34, ¶ 7. Instead, the Court “must examine the initiative’s wording to determine whether it comports with the constitutional single-subject requirement.” *In re 2019-2020 #3*, 2019 CO 57, ¶ 8. To satisfy the single-subject requirement, the “subject matter of an initiative must be necessarily and properly connected rather than disconnected or incongruous.” *In re Initiative for 2013-2014 #76*, 2014 CO 52, ¶ 8. “Implementing provisions that are directly tied to the initiative's central focus are not separate subjects”. *In re 2015-2016 # 63*, 2016 CO 34, ¶ 10.

“[T]he single subject requirement should be construed liberally to avoid unduly restricting the initiative process.” *In re Initiative for 2007-2008 # 61*, 184 P.3d 747, 750 (Colo. 2008).

Respondents agree that Petitioners preserved their challenge to the single subject requirement.

**B. Initiative #270 Has a Single Subject.**

Petitioners argue that Initiative #270 violates the single subject requirement because it creates a strict liability standard for damages caused by an oil and gas operator, while their competing measure, proposed initiative #289, was denied title on single subject grounds because it re-defined strict liability to require gross negligence or willful misconduct. *See Petition*, p. 4. Petitioners contend that if

their measure was denied on single subject grounds, so, too, should Initiative #270 be denied. Petitioners also argue that Initiative #270 violates the single subject requirement because it modifies the contributory negligence doctrine and other common tort defenses. *Id.* Petitioners’ complaint is really that they do not like the merits of Initiative #270, and its effect on other laws that Petitioners may favor.

**1. The Definition of Strict Scrutiny Does Not Violate the Single Subject Requirement.**

Contrary to Petitioners’ argument, Initiative #270 does not redefine the meaning of strict liability. Initiative #270 defines strict liability as “liability without regard to fault, negligence, or intent.” R. 2. Per Merriam Webster’s Dictionary, “strict liability” means liability imposed without fault. *Merriam-Webster.com*. 2024. <https://www.merriam-webster.com> (7 May 2024). Many legal dictionary sources generally define strict liability as liability incurred for causing damage without the necessity of proving intent or negligence. *See LegalDictionary.net*, <https://legaldictionary.net/strict-liability/> (May 7, 2024) (“Liability incurred for causing damage or harm to life, limb, or property without the necessity of proving intent or negligence.”); *Justia Legal Dictionary*, <https://dictionary.justia.com/strict liability/> (May 7, 2024) (“Automatic financial responsibility for harm caused by inherently hazardous materials or activities,

without needing to prove negligence”). The definition of strict liability in Initiative #270 is consistent with these definitions and the ordinary meaning of the term.

To the contrary, in Initiative #289, Petitioners redefine “strict liability” to mean the opposite of all these definitions and the opposite of the common understanding of the term. Initiative #289 redefines “strict liability” to mean “liability where an operator, owner, or producer has acted with gross negligence or willful misconduct.”

<https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/filings/2023-2024/289Final.pdf>.

The Title Board used its discretion to determine that it lacked jurisdiction to set a title for Initiative #289, because it could not set a title that clearly expressed a single subject given the extreme redefinition of the term “strict liability.” Colo. Const., art. V, § 1(5.5), states:

No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in the title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. *If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls.*

(Emphasis supplied). Notwithstanding the Title Board’s determination on Initiative #289, Initiative #270 did not suffer the same fate because its definition of

strict liability is consistent with the dictionary and commonly understood definitions. A proposed initiative that "tends to affect or carry out one general objective or purpose presents only one subject," and "provisions necessary to effectuate the purpose of the measure are properly included within its text." *In re 2013-2014 #90*, 2014 CO 63, ¶ 11.

The definition of strict liability in Initiative #270 is not a separate subject.

**2. The Effect of Initiative #270 on Other Laws or Doctrines Is Not a Single Subject Violation.**

Petitioners also argue that Initiative #270 violates the single subject requirement because it modifies the contributory negligence doctrine and other common tort defenses. *Petition*, p. 4. While Initiative #270 may alter the standard for imposing liability on oil and gas operators, this argument is about the effect of the measure on other laws, and this is precisely the type of analysis that the Court may not engage in at this stage. *See In re 2019-2020 #3*, 2019 CO 57, ¶ 8 (The Court does “not address the merits of the proposed initiative” or “suggest how it might be applied if enacted.”). This is not a single subject violation.

Indeed, the nub of Petitioners’ argument is how the measure might change existing laws or legal defenses. In its limited role in reviewing a ballot initiative, the Court is “prohibit[ed]” from addressing the merits of a proposed initiative, and

from suggesting how an initiative might be applied if enacted.” *In re Title, Ballot Title, and Submission Clause of 2011-2012 #45*, 2012 CO 26, ¶ 9.

A proposed initiative that "tends to affect or carry out one general objective or purpose presents only one subject," and "provisions necessary to effectuate the purpose of the measure are properly included within its text." *In re 2013-2014 #90*, 2014 CO 63, ¶ 11.

Initiative #270 meets the single subject requirement.

## **II. The Title Set by the Title Board is Not Misleading.**

### **A. Standard of review and preservation.**

“The Title Board’s duty in setting a title is to summarize the central features of a proposed initiative.” *In re 2013-2014 #90*, 2014 CO 63, ¶ 24. The Title Board is “afforded discretion in resolving interrelated problems of length, complexity, and clarity in designating a title and ballot title and submission clause.” *In re Initiative for 2015-2016 #73*, 2016 CO 24, ¶ 23. The Title Board is required to summarize the central features of a proposed initiative fairly, but it "need not explain the meaning or potential effects of the proposed initiative on the current statutory scheme." *Id.* Nor must a title recite every detail of the proposed measure. *In re Initiatives for 2001-2002 #21 & #22*, 44 P.3d 213, 222 (Colo. 2002). The Court will reverse the title set by the Board “only if a title is insufficient, unfair, or

misleading.” Id. ¶ 8. The Court does not “consider whether the Title Board set the best possible title.” *In re Initiative for 2019-2020 #3*, 2019 CO 107, ¶ 17.

Respondents agree that Petitioners preserved their challenge to the title set by the Board.

**B. The Title Need Not Include a List of All Laws That May be Affected by the Measure.**

Petitioners erroneously contend that the title is misleading because it does not inform voters that the measure “imposes strict liability regardless of the exercise of reasonable care, adherence to industry best practices, or the intentional or negligent-conduct [sic] of a plaintiff.” *Petition*, p. 4, ¶ 2. The Title Board considered Petitioners’ concerns in this regard but rejected the request to list out all impacted laws or defenses, and instead inserted language in the title advising voters that the measure “hold[s] 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.”

Thus, the Title Board exercised its discretion to craft a title that seeks to avoid “public confusion,” is “brief” and “unambiguously states the principle of the provision sought to be added, amended, or repealed.” §1-40-106(3)(b), C.R.S.

This Court should defer to the Title Board’s discretion. *In re Title, Ballot Title, &*

*Submission Clause for 1999-2000 #256*, 12 P.3d 246, 255 (Colo. 2000) (“In reviewing the actions of the Board, we grant great deference to the board’s broad discretion in the exercise of its drafting authority.”) “While titles must be fair, clear, accurate and complete, the Title Board is not required to set out every detail of an initiative.” *In re Title, Ballot Title, & Submission Clause for 2007-2008 #62*, 184 P.3d 52, 60 (Colo. 2008). The title for Initiative #270 satisfies this test.

### **CONCLUSION**

The Proponents respectfully request the Court to affirm the actions of the Title Board regarding Proposed Initiative 2023-2024 #270.

Respectfully submitted this 8<sup>th</sup> day of May 2024.

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## CERTIFICATE OF SERVICE

I hereby certify that on this 8<sup>th</sup> day of May 2024 a true and correct copy of the foregoing **RESPONDENTS' OPENING BRIEF IN SUPPORT OF PROPOSED INITIATIVE 2023-2024 #270** was filed and served via the Colorado Courts E-Filing System to the following:

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