

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, Colorado 80203</p>	<p>DATE FILED: May 30, 2018 5:55 PM</p>
<p>Original Proceeding Pursuant To C.R.S. § 1-40-107(2), C.R.S. (2017) Appeal from the Ballot Title Board</p> <hr/> <p>In the Matter of The Title, Ballot Title, and Submission Clause for Proposed Initiative 2017-2018 #178, #179, #180, #181 (“Regulation of Oil and Gas Development”)</p> <p>Petitioner: Janette S. Rose, v.</p> <p>Respondents: John Brackney and Guillermo DeHerrera</p> <p>and</p> <p>Title Board: Suzanne Staiert, Glen Roper, and Jason Gelender</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
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<p style="text-align: center;">RESPONDENTS’ ANSWER BRIEF</p>	

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 1,588 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.

In response to each issue raised, the appellee must provide, under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

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/ Jason R. Dunn

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Respondents John Brackney and Guillermo DeHerrera, registered electors of the State of Colorado, through their undersigned counsel, submit their Answer Brief in this original proceeding challenging the actions of the Title Board on Proposed Initiatives 2017-2018 #178 through #181.

SUMMARY OF THE ARGUMENT

Petitioner presents two arguments in their opening brief: (1) the Initiatives' titles do not accurately convey to voters the effect of a "Yes/For" or "No/Against" vote on the measures; and (2) the Initiatives contain an impermissible second subject because they restrict the regulatory authority of both state and local governments over oil and natural gas development. Neither argument provides a ground for reversal.

First, Petitioner contends that the titles mislead voters into voting the opposite of what they intend to do. *See* Pet'r's Opening Br., at 7–10. She argues that voters would be confused or possibly misled because the titles' use of the word "affirming" in conjunction with local governmental authority over oil and natural gas development suggests

to voters that a “yes” vote would preserve the status quo or even increase local governmental authority while hiding from voters that other parts of the measure restrict that authority. This argument, however, focuses too narrowly on one clause within the titles. The titles, viewed in totality, accurately convey to voters that the measures address the scope of state and local governmental authority and then provide details regarding that scope—for example, affirming local governments’ authority to regulate certain surface aspects and prohibiting state and local governments from unreasonably restricting a property owner’s access to surface or mineral property. Voters thus clearly know from the titles that a vote for one of these measures would result in both an affirmation of local government’s authority to regulate certain surface aspects of oil and natural gas development and specific restrictions on state and local governments’ regulatory power. Therefore, the titles do not mislead voters and should be affirmed.

Second, Petitioner contends that the measures, as reflected in their titles, focus on local governmental authority over oil and natural gas development and impermissibly hide, “coiled up in the folds,” the

provisions addressing restrictions on state governmental authority. *See* Pet’r’s Opening Br., at 11–12. This is simply not true. The measures openly express that they apply to state governmental authority in at least three different ways: (1) in the title of the constitutional article; (2) in the section headings; and (3) in the text of the measures themselves. The titles also expressly state that the measures concern “the scope of *state and local governmental authority* to regulate oil and natural gas development.” (Emphasis added). No danger of a second subject being “coiled up in the folds” is present, and thus these measures each contain a single subject.

Therefore, this Court should affirm the Title Board’s actions.

ARGUMENT

I. THE TITLES EXPRESS THE TRUE MEANING AND INTENT OF THE MEASURES.

Petitioner’s argument regarding the measures’ titles focuses on one word contained in the middle of the titles—“affirming.” *See* Pet’r’s Opening Br., at 7–10. Petitioner elevates this word to an unworthy height and contends that, because the titles state that the measures “affirm[] the authority of local governments to regulate certain surface

aspects of [oil and natural gas] development,” voters must think that the measures would not provide restrictions on this authority and vote accordingly. In other words, Petitioner contends that the “affirming” language “communicates an approving endorsement” of local governmental authority over oil and natural gas development, and thus voters would vote for or against the measures on that alone and unknowingly against their actual intention. *Id.* at 7. This is too narrow a reading of the titles.

The measures’ titles fairly and accurately describe that the measures concern the *scope* of state and local governmental authority over oil and natural gas development. This purpose is conveyed at the very beginning of the titles, which are identical and state in full:

An amendment to the Colorado constitution concerning the scope of state and local governmental authority to regulate oil and natural gas development, and, in connection therewith, affirming the authority of local governments to regulate certain surface aspects of such development so long as the regulation does not conflict with state law and prohibiting state and local governments from unreasonably restricting a property owner’s access to the owner’s surface or mineral property or imposing technically or economically unfeasible conditions on access or development.

After addressing the measures' purpose, the titles then describe that the measures would *both* affirm local government's authority to regulate certain surface aspects of oil and natural gas development *and* provide restrictions on state and local governments' ability to regulate oil and natural gas development. The affirmation of local governmental authority over surface aspects is specifically qualified by language stating "so long as the regulation does not conflict with state law."

Therefore, it would be difficult for a voter reading the titles to focus exclusively on the clause expressing an affirmation of local governmental authority over surface aspects and ignore all of the language in the titles expressing restrictions on state and local government regulatory authority. It would be even more difficult for a voter to be confused and vote for or against the measure on the basis of that clause alone. Rather, a voter reading the titles would know that the measures would affirm local governmental authority subject to restrictions on that authority (and state governmental authority) as described elsewhere in the titles. As a result, the measures' titles bear no resemblance to the situation in *In re Title, Ballot Title, Submission*

Clause & Summary Pertaining to a Proposed Initiative on “Obscenity”, 877 P.2d 848, 851 (Colo. 1994), where the Court determined that although the title would appear to most voters to represent an expansion of the right of free expression in Colorado, the measure at issue actually would do the opposite and foreclose the possibility that free expression could be granted greater protection under the Colorado Constitution than under federal standards.

This Court should therefore affirm the Title Board’s decisions to set the titles as currently written.¹

II. STATE AUTHORITY OVER OIL AND NATURAL GAS DEVELOPMENT FALLS WITHIN THE MEASURES’ SINGLE SUBJECT.

Petitioner also contends that the measures contain a second subject—state governmental authority over oil and natural gas development—that is impermissibly “coiled up in the folds” of the measures. *See* Pet’r’s Opening Br., at 11–12; *see also In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-02 No. 43*, 46

¹ Respondents’ arguments addressing whether the titles for Initiatives #178 and #180 should have included reference to these measures’ provisions on fees are addressed in Respondents’ Opening Brief and are not repeated here. *See* Resp’t’s Opening Br., at 13–15.

P.3d 438, 442 (Colo. 2002) (articulating that one danger of omnibus measures is the presence of additional subjects “coiled up in the folds” that would cause voter surprise). In making this argument, Petitioner asserts that the focus of the measures is local governmental authority and that the provisions on regulatory authority at the state level are “tucked quietly at the end.” Pet’r’s Opening Br., at 12.

Similar to her title argument, Petitioner is elevating one part of the measures above the other parts contrary to the measures’ plain language. The measures exhibit in multiple places that they concern both local *and* state government control of oil and natural gas development. For each measure, the title of the proposed new article to the Colorado Constitution is “State and Local Government Control of Oil and Natural Gas Development” and the section heading for the substantive provisions is “State and Local Governments.” Moreover, just because the measures first address local governmental authority does not mean that the provisions applicable to both state and local governments, which follow in the next section, are surreptitiously tucked away. These sections of the measures have equal weight.

Therefore, the provisions regarding state governmental authority over oil and natural gas development are not coiled up in the folds and would not surprise voters.

These measures each have the same single subject—the scope of state and local governmental authority over oil and natural gas development. Within this scope, the provisions addressing state and local governments are necessarily connected. *See In re Title, Ballot Title, Submission Clause, & Summary Adopted March 20, 1996, by the Title Bd. Pertaining to Proposed Initiative 1996–6*, 917 P.2d 1277, 1280 (Colo. 1996) (explaining that when a measure’s subject matter is “necessarily or properly connected,” then it contains a single subject). Because state and local governments must interact as to the regulation of oil and natural gas development, a measure regarding the scope of governmental authority over such development would naturally address both state and local governmental authority. Cases such as *City of Longmont v. Colo. Oil & Gas Ass’n*, 369 P.3d 573 (Colo. 2016), and *City of Fort Collins v. Colo. Oil & Gas Ass’n*, 369 P.3d 586 (Colo. 2016), both cited by Petitioner, demonstrate the unique interaction between state

and local governments over oil and natural gas development.

Therefore, these measures “tend[] to effect or to carry out one general objective or purpose” and thus each contain a single subject. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-00 #256*, 12 P.3d 246, 253 (Colo. 2000).

CONCLUSION

The Initiatives each contain a single subject and possess fair and accurate titles. Respondents therefore respectfully ask this Court to affirm the Title Board’s denial of the Petitioner’s Motions for Rehearing.

Respectfully submitted this 30th day of May 2018.

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/s/ Jason R. Dunn

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CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2018, I electronically filed a true and correct copy of the foregoing **RESPONDENTS' ANSWER BRIEF** via the Colorado Courts E-Filing System which will send notification of such filing and service on all counsel of record:

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