

<p>COLORADO SUPREME COURT 2 East 14th Ave. Denver, Colorado 80203</p>	
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2018) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2019-2020 #122 ("Limits on Local Housing Growth")</p> <p>Petitioner:</p> <p>Scott Smith,</p> <p>v.</p> <p>Respondents:</p> <p>Daniel Hayes and Charlotte R. Robinson,</p> <p>and</p> <p>Title Board:</p> <p>Melissa Polk; David Powell; and Julie Pelegrin.</p>	<p>▲ COURT USE ONLY ▲</p>
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<p>THE TITLE BOARD'S ANSWER BRIEF</p>	

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 the word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 668 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).

Under a separate heading placed before the discussion of each issue, the brief contains statements of the applicable standard of review with citation to authority, statements whether the issue was preserved, and if preserved, the precise location in the record where the issue was raised.

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/ Emily Buckley

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TABLE OF CONTENTS

ARGUMENT 1

 I. The Board correctly found that #122 contains a single
 subject..... 1

 II. The title set by the Board is not incomplete..... 4

CONCLUSION 4

TABLE OF AUTHORITIES

CASES

Matter of Title, Ballot Title & Submission Clause for 2017-2018
#4, 395 P.3d 318 (Colo. 2017)..... 1

Matter of Title, Ballot Title and Submission Clause for 2013-2014
#90, 328 P.3d 155 (Colo. 2014)..... 4

The Colorado Title Board (“Board”), by and through undersigned counsel, hereby submits the following Answer Brief.

STANDARD OF REVIEW AND PRESERVATION

The Board and Petitioner agree on the standard of review and that the issues raised by Petitioner were preserved below.

ARGUMENT

I. The Board correctly found that #122 contains a single subject.

The Board correctly determined that #122 contains only one subject: limiting housing growth in Colorado. As presented in the Board’s Opening Brief, this Court held that a similar proposed initiative met the single subject test in *Matter of Title, Ballot Title & Submission Clause for 2017-2018 #4*, 395 P.3d 318 (Colo. 2017) (#4). Petitioner’s Opening Brief argues that one aspect of #122 not present in #4 violates the single subject rule, namely the allowance of an additional fifteen hundredths of one percent additional growth for affordable and senior privately-owned residential housing growth. *See* Pet’s Op. Br. 10; *see also* Record, pp. 3, 10–11.

Petitioner argues that the carve out for affordable and senior housing violates the single subject because it constitutes logrolling, i.e., combining subjects with no necessary or proper connection. Pet. Op. Br. 11. To the contrary, the allowance of slightly higher levels of affordable and senior housing is entirely consistent with the #122's single subject of limiting housing growth. #122 sets a ceiling for residential housing growth of one percent, except that the ceiling for growth is marginally higher by fifteen hundredths of one percent for affordable and senior privately-owned residential housing. See Record 12 ("Housing permits for senior housing and affordable housing may each total 0.15 percent in excess of the 1 percent growth limit."). In other words, the proposed initiative does *not* provide for more affordable or senior housing to be developed; it simply sets a slightly higher limit on affordable and senior housing growth.

Petitioner relies on Proponents' argument before the Board that "[t]he fiscal impact statement should include the fact that affordable housing will be provided for in # 122 which constitutes an increase in this type of construction." See Record 9; see also Pet's. Op. Br. 11.

While the Court may take notice of Proponents' arguments before the Board, significantly, the Board disagreed with Proponents' argument and denied their request to amend the fiscal impact statement. Record, 11.

The final Fiscal Impact statement concludes #122 would have an "indeterminate local government and expenditure impact." Record, 13. It states that "a 1.0 percent growth limit will constrain some areas but not others depending on current trends in the issuance of housing permits. *Published data are unavailable for the number of affordable or senior housing units.*" Record 12 (emphasis added). The Fiscal Impact Statement concludes that #122's "impact will depend on the growth patterns and plans in each community." Record 13. Although Proponents argued before the Board that the slightly higher ceiling for affordable and senior housing would result in greater growth in these areas, the Fiscal Impact Statement contradicts that argument. In fact, in a jurisdiction where affordable and senior housing already exceeds

1.15 percent growth annually, #122 would have the effect of limiting such growth.¹

The slightly higher limits for growth in senior and affordable residential housing are consistent with #122's objective of limiting housing growth in Colorado and thus are directly connected to #122's single purpose.

II. The title set by the Board is not incomplete.

The title set by the Board is not incomplete. The Board hereby incorporates and rests on the arguments in Section IV of its Opening Brief.

CONCLUSION

For the foregoing reasons, the Court should affirm the Board's actions in setting the title for #122.

¹ Petitioner also argues that #122 could also increase housing prices as a function of supply and demand, but this argument goes to the merits of the proposed initiative. This Court does "not address the merits of the proposed initiatives nor suggest how they might be applied if enacted." *Matter of Title, Ballot Title and Submission Clause for 2013-2014 #90*, 328 P.3d 155, 159 (Colo. 2014).

Respectfully submitted this 18th day of November, 2019.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S ANSWER BRIEF** upon the following parties or their counsel electronically via CCEF or by U.S. Mail, at Denver, Colorado, this 18th day of November, 2019 addressed as follows:

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