

<p>SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, Colorado 80203</p>	
<p>Original Proceeding Pursuant to Colo. Rev. Stat. §1-40-107(2) Appeal from the Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2019-2020, #284</p> <p>Petitioner: JANETTE SUSAN ROSE</p> <p>v.</p> <p>Respondents/Proponents: GREG KISHIYAMA and KEITH VENABLE</p> <p>and</p> <p>Ballot Title Board: THERESA CONLY, DAVID POWELL, and JASON GELENDER</p>	
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<p>RESPONDENTS'/PROPONENTS' OPENING BRIEF</p>	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all the 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:

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It contains under a separate heading a concise statement of the applicable standard of appellate review with citation to authority.

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/s/ Suzanne Staiert
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Greg Kishiyama and Keith Venable (“Respondents/Proponents”), through the undersigned counsel, hereby respectfully submit this Opening Brief in support of the title, ballot title and submission clause set by the Title Board for Proposed Initiative 2019-2020 #184 (the “Initiative” or “Measure”).

STATEMENT OF THE ISSUES PRESENTED

1. Whether the Title Board erred in ruling that the measure contains a single subject as required by Article V, § 1(8) of the Colorado Constitution and C.R.S. §1-40-105(4).
 - a. Whether use of the term “restriction” creates multiple subjects.
 - b. Whether the impacts of the measure on non-consumers creates multiple subjects.
2. Whether the Title Board erred in ruling that the measure satisfies the clear title requirement in Colo. Rev. Stat. § 1-40-106(3)(b) and fairly advises voters of the central features of the measure.
 - a. Whether the Title describes the measure’s limitations and restrictions on state and local government.
 - b. Whether the Title must describe the measure’s legal effect on conflicting statutes.
 - c. Whether the measure must further define the term “restriction”

d. Whether the Title must describe the measure's applicability to home rule jurisdictions.

STATEMENT OF THE CASE

The Petitioner brings this original proceeding pursuant to section 1-40-107(2), C.R.S., as an appeal of the Title Board's decision to deny Petitioner's Motion for Rehearing and set title for Proposed Initiative 2019-2020 #284.

Initiative #284 amends Colorado statute. The measure, in full, states:

No state statute, regulation, municipality, county or local government shall inhibit consumer choice through restrictions on the installation of natural gas utilization in homes and businesses for cooking, hot water systems, generators and heating systems in new construction or renovation or otherwise limit a consumer's ability to use or install natural gas, except as required for safety purposes. This section shall modify, limit and supersede any conflicting state statute or regulation.

Proposed Initiative 2019-2020 #284 seeks to prohibit state and local governments from restricting the use and installation of natural gas in homes and businesses for cooking, hot water systems, generators, and heating systems in new construction or the renovation, except for safety purposes. The measure would supersede any conflicting statute or regulation.

Respondents/Proponents Greg Kishiyama and Keith Venable filed an original draft of the measure on March 6, 2020. The Respondents/Proponents filed an amended draft of the Initiative with the Title Board on March 6, 2020. The

Title Board considered the Initiative on April 1, 2020 and determined that it had jurisdiction to set title and set the following title:

A change to the Colorado Revised Statutes prohibiting the state and local governments from restricting the installation and use of natural gas in homes and businesses except as required for safety purposes.

The Petitioner Janet Susan Rose and Respondents/Proponents filed timely Motions for Rehearing on April 8, 2020 pursuant to section 1-40-107(1)(a), C.R.S. The Petitioner's Motion for Rehearing is at issue in this appeal.

At the April 15, 2020 Rehearing, the Title Board denied the Petitioner's Motion for Rehearing, except for modifications to the title:

A change to the Colorado Revised Statutes prohibiting state and local government restrictions or other limitations on the installation and use of natural gas except as required for safety purposes, including restrictions on the installation and use of natural gas in homes and businesses for cooking, hot water systems, generators, and heating systems.

Petitioner Janet Susan Rose subsequently filed a timely petition for review in this Court on April 22, 2020.

SUMMARY OF ARGUMENT

The Title Board properly found the initiative contained a single subject. The initiative prohibits government from restricting the installation and use of natural gas in homes and businesses except for safety purposes. All components of the initiative are connected to this purpose. The initiative is singular in its purpose to

restrict government regulations. The scope of the measure is very limited as it applies only to natural gas. The measure is clear, and voters would not be surprised by its application. Any effects of the measure are a necessary result of the measure's purpose and is not a separate subject.

The ballot Title properly notifies voters of the central aspects of the measure. The term "restriction" is not overly broad and is commonly understood by voters. It would be improper to include the speculative effects of a measure in the Title.

STANDARD OF REVIEW

The Court has the authority to review the Title Board's single-subject and clear-title findings. *In the Matter of the Title, Ballot Title and Submission Clause for 2017-2018 No. 4*, 395 P.3d 318, 323 (Colo. 2017). When reviewing a challenge to the Title Board's decision on single subject and clear title, this Court "employ[s] all legitimate presumptions in favor of the propriety of the Title Board's action." *In the Matter of Title, Ballot Title, and Submission Clause for 2013-2014 No. 89*, 328 P.3d 172, 176 (Colo. 2014); *In the Matter of the Title, Ballot Title and Submission Clause for 2017-2018 No. 4*, 395 P.3d at 323. Provisions relating to the initiative should be liberally construed to permit the exercise of the electors of this most important privilege. *See Brownlow v. Wunch*, 83 P. 2d 775, 777 (Colo. 1938). Only in a clear case should this Court reverse a

decision of the Title Board. *In re Title, Ballot Title and Submission Clause Pertaining to Casino Gambling Initiative*, 649 P.2d 303, 306 (Colo. 1982).

LEGAL ARGUMENT

I. THE TITLE BOARD PROPERLY FOUND THE MEASURE CONTAINS A SINGLE SUBJECT.

Article V, § 1(5.5) of the Colorado Constitution requires that “[n]o measure shall be proposed by petition containing more than one subject...” No title can be set and submitted to the people for adoption or rejection at the polls if a measure contains more than one subject and has at least two distinct and separate purposes not dependent upon or connected with each other. *People ex rel. Elder v. Sours*, 74 P. 167, ¶ 177 (1903); Colo. Const. art. V, § 1(5.5); *see also* § 1-40-106.5 (statutory single-subject requirement).

The single-subject requirement serves two functions. First, it prohibits incongruous subjects in the same measure that have no necessary or proper connection for the purpose of enlisting support of a measure that could not be passed on its own merits. § 1-40-106.5(1)(e)(I).

A proposed initiative cannot seek to accomplish multiple, discrete, unconnected purposes. *See In re Title, Ballot Title, Submission Clause, & Summary Adopted April 5, 1995, by Title Bd. Pertaining to a Proposed Initiative Pub. Rights in Waters II*, 898 P.2d 1076, 1080 (Colo. 1995) (“*Waters II*”). If the initiative

tends to effect or to carry out one general object or purpose, it is a single subject under the law. *In re 2015–2016 #73*, 369 P.3d 565, 568 ¶ 17 (Colo. 2016); *In re Matter of Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 57, ¶¶ 11-16, 442 P.3d 867, 869–70 (Colo. 2019). Implementation details that are directly tied to the initiative's central focus do not constitute a separate subject. *See In re 1999–2000 No. 200A*, 992 P.2d 27, 30 (Colo. 2000). Even an initiative that proposes a comprehensive framework can satisfy single subject if all its provisions are related. *See In re Title, Ballot Title, & Submission Clause for 2009–2010 No. 91*, 235 P.3d 1071, 1076 (Colo. 2010); *Matter of Title, Ballot Title, & Submission Clause for 2013-2014 #89*, 2014 CO 66, ¶ 12, 328 P.3d 172, 176–77 (Colo. 2014).

The second function of the single-subject requirement is “[t]o prevent surreptitious measures and apprise the people of the subject of each measure by the title, that is, to prevent surprise and fraud from being practiced upon voters.” § 1-40-106.5(1)(e)(II). This voter surprise occurs with the inadvertent passage of a surreptitious provision ‘coiled up in the folds’ of a complex initiative.” *In re Proposed Initiative 2001–02 No. 43*, 46 P.3d 438, 442 (Colo. 2002); *see* § 1–40–106.5(1)(e)(II), C.R.S.

In order to determine whether an initiative carries out a single purpose, the Court reviews the initiative as a whole rather than piecemeal and examine

individual statements in light of their context. *In re Title, Ballot Title & Submission Clause #24*, 21 P.3d 350, 353 (Colo. 2009). The single-subject requirement is construed liberally to avoid unduly restricting the initiative process. *Id.*

The initiative in the instant case does not present either of the two dangers. First, it does not seek to gain support from various factions by combining unrelated subjects in a single proposal. Here, the initiative seeks to prohibit government restrictions on the installation and utilization of natural gas in homes and businesses. Because each part of the measure is related to the accomplishment of a single purpose, the proposal will pass or fail on its own merits and does not run the risk of garnering support from factions with different or conflicting goals.

The second risk, that voters may be surprised by effects that are hidden in the body of an initiative or are misleading or overly complex, is also not present. This only exists where an initiative, although claiming to have a single subject, in reality has multiple purposes, and as a result, voters would not expect that passing the initiative would lead to one or more of the initiative's outcomes. *See In re Title, Ballot Title & Submission Clause 2011–2012 No. 3*, 274 P.3d 562 ¶ 19 (Colo. 2012). Here there is no risk that the voters will be unaware of the primary effects of initiative because the initiative is not overly complex. To the contrary, each of the proposed initiatives is notably brief and straightforward. A review of the plain

language does not reveal any embedded provisions that would lead to voter surprise or fraud. *In re Proposed Initiative 2001–02 No. 43*, 46 P.3d at 442. Rather, the plain language of the measure is unambiguous and has a narrow purpose. As such, voters would not be surprised to learn that by voting for the initiative, they would be voting to limit the government’s regulatory authority over natural gas.

a. The use of the term “restriction” does not create multiple subjects.

The term “restriction” is necessarily connected to the purpose of the measure. The Court has previously ruled that initiatives that grant powers to restrict or prohibit conduct may affect other laws inasmuch as they directly relate to the subject matter, but this does not violate the single-subject requirement.

Matter of Title, Ballot Title & Submission Clause for 2013-2014 #90, 2014 CO 63, ¶ 34, 328 P.3d 155, 164–65 (Colo. 2014).

Petitioner lists six subjects born from the term “restriction”: (a) requirements for the inspection of natural gas appliances; (b) constraints on downstream consumer use of patented or trademarked products using natural gas; (c) compliance with antitrust laws applicable to products using natural gas; (d) collection of state or local taxes on certain materials or products; (e) obligations to meet energy efficiency requirements in building codes; and (f) compliance with state greenhouse gas emission targets.

First, these impacts are all speculative. For example, the Petitioner asks this Court to blindly accept her factually unsupported position that the only way to meet energy efficiency requirements in building codes and comply with state greenhouse gas emission targets is to forbid consumers from using natural gas in their homes and businesses. Petitioner ignores that the measure by its plain language exempts restrictions for safety purposes, where some of these items may well fall. The measure also only applies to state and local government and not federal patent or antitrust law. Second, to the extent any of these impacts may happen they do not broadly change existing doctrines. These doctrines are affected only to the extent it relates to the subject matter of the initiative. This Court has, “never held that just because a proposal may have different effects ... it necessarily violates the single-subject requirement.” *In re Title, Ballot Title & Submission Clause 1999–2000 No. 256*, 12 P.3d at 254.

b. The impacts of the measure on non-consumers does not create multiple subjects.

Petitioner argues that the measure contains a second subject by inhibiting the choices of builders, apartment building owners, and state and local governments. The measure, by its plain language, is intended to restrict the ability of government to enact regulations on consumer use and installation of natural gas.

The measure does not limit choices of builders or apartment owners. To the contrary and to the extent they are also consumers of natural gas it protects them from the same restrictions afforded to all consumers. And, even if this was a true effect of the initiative, this Court has not found that an initiative with different effects violate the single-subject requirement. *In re 1999–2000 No. 256*, 12 P.3d 246, 254 (Colo. 2000). Furthermore, it is beyond this Court’s scope of review to speculate on the future effects the measure may have if it is adopted. *Id. at 257*.

II. THE TITLE FAIRLY ADVISES VOTERS OF THE CENTRAL FEATURES OF THE MEASURE.

Titles and submission clauses 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.” *In re #24*, 218 P.3d at 356 (quoting *In re Title, Ballot Title & Submission Clause for Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 242 (Colo. 1990)). “The purpose of reviewing an initiative title for clarity parallels that of the single-subject requirement: voter protection through reasonably ascertainable expression of the initiative's purpose.” *In re Title, Ballot Title, Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 648 (Colo. 2010)

The responsibility of the Title Board is “set[ting] fair, clear and accurate titles that do not mislead the voters through a material omission or

misrepresentation.” *In re 1999–2000 No. 256*, 12 P.3d at 256. This requirement, however, does not mean that the Titles need to contain every detail of the proposal. *Id.* The Titles also are not required to explain every possible effect of enacting the initiative. *In re Title Ballot Title, & Submission Clause for 2007–2008 No. 61*, 184 P.3d 747, 752 (Colo. 2008).

The Title Board has considerable discretion in drafting the Titles. *In re 1999–2000 No. 256*, 12 P.3d at 255. Unless a Title is insufficient, unfair, or misleading, the Court defers to the Title Board's drafting authority. *See In re #62*, 184 P.3d at 60. In this Court’s limited review of the Title Board's actions, it does not address the merits of the proposed initiative nor suggest how they might be applied if enacted. *In re 2011–2012 No. 3*, 274 P.3d 562, 565 (Colo. 2012).

For purposes of a voter determining whether to vote “yes” or “no,” this initiative and Title are clear and it is not likely to mislead voters as to the initiative purpose or effect, nor does the Title conceal some hidden intent. *See In re #24*, 218 P.3d at 356.

a. The Title fairly describes the measure’s limitations and restrictions on state and local government.

The Petitioner alleges the Title Board erred in that the Title fails to inform voters that, “the measure prohibits state statutes, regulations and local governments

from adopting restrictions on the installation of natural gas use in homes and businesses for cooking, hot water systems, generators, and heating systems, and also adds a catch-all provision to capture any other statute, regulation or local government that otherwise limits a consumer’s ability to use or install natural gas;”

Titles need not contain every feature of the proposed measure. *In re Title, Ballot Title, Submission Clause, & Summary with Regard to a Proposed Petition for an Amendment to the Constitution of the State of Colo. Adding Section 2 to Article VII*, 907 P.2d 586, 592 (Colo. 1995).

At the Rehearing, the Title Board modified the Title, which addressed the Petitioner’s concerns. The amended Title advises voters that governments will be prohibited from placing “restrictions or other limitations” on the installation and use of natural gas. The measure also specifically advises voters of the uses including cooking, hot water systems, generators, and heating systems. The Title covers the precise issues Petitioner lists in her challenge.

b. The measure’s legal effect on conflicting statutes is not a central feature.

The fact that the Title does not discuss all of the potential impacts of the initiative is not improper, as the Title Board may not speculate on the potential effects of the initiative if enacted.

Amendment Concerning the Fair Treatment of Injured Workers Amendment, 873 P.2d 718, 720–21 (Colo. 1994).

The language in the Title provides sufficient notice to a voter or petitioner that the proposed amendment would effectuate a change in existing law by restricting government regulation over natural gas. The Court has rejected similar arguments that a Title is required to set forth the effect of the proposed amendment on the law with more particularity. *Matter of Title, Ballot Title & Submission Clause, & Summary Approved on Apr. 6, 1994, for Proposed Initiated Constitutional Amendment Concerning Fair Fishing*, 877 P.2d 1355, 1362 (Colo. 1994).

The fact that an amendment to a law will change the law is not a source of confusion. Voters will expect that if they vote for a change in the law then the law would operate differently once it is amended.

c. The term “restriction” is ordinarily understood by voters.

The electorate “must be presumed to know the existing law at the time [it] amend[s] or clarify[ies] that law.” *Colo. Ethics Watch v. Senate Majority Fund, LLC*, 269 P.3d 1248, 1254 (Colo. 2012) (brackets in original) (quoting *Common Sense All v. Davidson*, 995 P.2d 748, 754 (Colo. 2000)). The issue in Colorado Ethics Watch was whether a particular phrase had a settled definition when the

voter initiative was adopted. *Id.* The Court concluded that “the electorate was aware of the legal significance of the term “expressly advocated” when article XVIII was adopted by voter initiative.” *Id.* at 1256. Here, the term “restriction” is a commonly used and understood term, and the electorate is aware of its legal significance.

“Restriction” is defined in Black’s Law Dictionary as a confinement within bounds or limits; a limitation or qualification. *Id.* (11th ed. 2019). This is similar to its ordinary understanding, “to confine within bounds.” *Merriam-Webster’s Learners Dictionary*, (2019).

Voters will not be confused by the term restriction. While this term is not defined in the measure, titles are not required to include definitions of terms unless the terms adopt a new or controversial legal standard that would be of significance to all concerned with the initiative. *In re Ballot Title 1999-2000 No. 255*, 4 P.3d 485, 497 (Colo. 2000). Moreover, the Title Board is not required to define a term that is undefined in the proposed measure. *Id.*

d. The measure’s applicability to home rule jurisdictions is not a central feature.

Petitioner argues that the title makes no mention of the measure’s applicability to home rule jurisdictions. However, this does not violate the clear

title requirements. The Title Board is not required to state the effect that the measure will have on other constitutional or statutory provisions. *In re Proposed Initiative on Surface Mining*, 797 P.2d 1275, 1279 (Colo. 1990).

The impact on home-rule municipalities is an effect of the proposed initiative on current law and need not be included in the Title. *In re 1999–2000 No. 256*, 12 P.3d at 254.

CONCLUSION

Respondents/Proponents respectfully requests the Court affirms the Title Board’s actions determination that the measure satisfies the single-subject and clear title requirements.

Respectfully submitted this 6th day of May 2020.

MAVEN LAW GROUP

/s/ Suzanne Staiert

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Attorney for the

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CERTIFICATE OF SERVICE/MAILING

I hereby certify that on 6th day of May, 2020 a true and correct copy of the **RESPONDENTS’/PROPONENTS’ OPENING BRIEF** was served via the State of Colorado's ICCES File and Serve e-filing system, email and United States mail, postage prepaid, properly addressed to the following:

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