

<p>SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, Colorado 80203</p>	<p>DATE FILED: May 20, 2020 4:28 PM</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, #297</p> <p>Petitioner: JANETTE SUSAN ROSE</p> <p>v.</p> <p>Respondents/Proponents: GREG KISHIYAMA and NED SOUTHWICK</p> <p>and</p> <p>Ballot Title Board: THERESA CONLY, DAVID POWELL, and JASON GELENDER</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p style="text-align: center;">Supreme Court Case No.: 2020SA138</p>
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<p style="text-align: center;">RESPONDENTS'/PROPONENTS' ANSWER 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:

The brief complies with the applicable word limits set forth in C.A.R. 28(g) or 28.1(g).

It contains 1,268 words. (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

The brief complies with C.A.R. 28(b) and/or C.A.R. 28(c).

For each issue raised by the respondents, the brief contains under a separate heading before the discussion of the issue, a concise statement of whether the petitioner agrees with the respondents' statements concerning the standard of review with citation to authority 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/ Suzanne Staiert
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Greg Kishiyama and Ned Southwick (“Respondents/Proponents”), through the undersigned counsel, hereby respectfully submit this Answer Brief in support of the title, ballot title and submission clause set by the Title Board for Proposed Initiative 2019-2020 #297 (the “Initiative” or “Measure”).

ARGUMENT

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

The objective and purpose of Initiative 2019-2020 #297 is to prohibit government restrictions on natural gas except for safety reasons. This purpose is also the single subject and in compliance with Article V, section 1(5.5) of the Colorado constitution.

First, Petitioner argues that the initiative is overly broad in scope. In support of this argument Petitioner lists a sampling of laws she believes may be affected by the measure. However, "[t]he effects this measure could have on Colorado . . . law if adopted by voters are irrelevant to [a] review of whether [the proposed initiative] and its Titles contain a single subject." *In re Initiative for 2013-2014 #90*, 328 P.3d at 160 (quoting *In re Initiative for 2011-2012 #3*, 274 P.3d 562, 568 n.2 (Colo. 2019)).

Proponent’s agree with the Title Board’s position that these arguments go to the Petitioner’s complaints about the merits of the measure and does not weigh in

favor of rejecting the measure on single-subject grounds. Title Board Op.Br. p.6.

The potential effects are not relevant to a whether the proposed initiative contains a single subject. This Court has repeatedly held that “in determining whether a proposed initiative comports with the single subject requirement, [this Court] do[es] not address the merits of the proposed initiative or predict how it may be applied if adopted by the electorate.” *In re Initiative for 2013-2014 #90*, 328 P.3d at 161 (quoting *In re Title, Ballot Title & Submission Clause for 2007-2008 #62*, 184 P.3d 52, 58 (Colo. 2008)).

Petitioner further contends that the “initiative would prohibit new, and upend existing, state and local laws and regulations implementing policies that restrict or limit the installation and use of natural gas in home and businesses.” Petitioner’s Op.Br. p.10. This Court has heard and rejected similar arguments related to local control of oil and gas setbacks. *Matter of Title, Ballot Title & Submission Clause for 2013-2014 #90*, 2014 CO 63, 328 P.3d 155 (Colo. 2014). In that case Petitioner’s argued the setback provision would expand local governments’ authority to enact laws regulating oil and gas development. “Petitioners contend that the initiatives: (1) exempt local governments from complying with the requirements of article XX and section 16 of article XIV of the Colorado Constitution; (2) change the legal standard used to determine the validity of a local

law that conflicts with a state law; and (3) deprive property owners of the rights and protections granted under section 14 and 15 of article II of the Colorado Constitution.” *Id.* at 160–61. This Court disagreed finding that, “Petitioners overstate the breadth of the Proposed Initiatives. The Proposed Initiatives do not broadly change constitutional home rule provisions, the preemption doctrine, or takings provisions; rather, the initiatives affect these constitutional provisions and doctrines only inasmuch as they directly relate to the subject matter of the Proposed Initiatives—the expansion of local governments' authority to enact laws regulating oil and gas development that are more restrictive than state law.” *Id.*

In the instant case, the measure may affect some of these same doctrines such as home rule provisions or the preemption doctrine, but the measure will not broadly change these provisions. Instead, the impact is bound to the limited subject matter of the Initiative - the restriction on the use of natural gas except for safety reasons.

Next, Petitioner argues that by failing to define the terms “restrictions” and “limit,” the measure fails to inform voters of the policies upon passage. Petitioner’s Op.Br. p.10. The crux of Petitioners' argument is that the failure to define the terms is a bad policy choice. However, in determining whether a proposed initiative comports with the single subject requirement, the Court does not address the merits of the proposed initiative or predict how it may be applied if adopted by the

electorate. *In re Title, Ballot Title & Submission Clause for 2007–2008 No. 62*, 184 P.3d 52, 58 (Colo.2008). Whether the petitioner believes the initiative is a “bad idea” is not the test of whether it meets the single subject requirement.

Finally, Petitioner argues the initiative violates single subject requirements because it’s stated purpose is in opposite to its effect. Specifically, Petitioner contends, “[i]t will primarily drive the choices of others, such as builders, and apartment building owners, and state and local governments....” Petitioner’s Op.Br.p.12. As appropriately argued by the Title Board, these arguments cannot be considered by the Title Board because they are related to the potential effects and consequences of a measure. Title Board Op.Br. p.7 (*citing Matter of Title, Ballot Title and Submission Clause for 2019-2020 #3*, 442 P.3d 867, 870 (Colo. 2019)).

Where an 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 (Colo. 2016); *In re Matter of Title, Ballot Title & Submission Clause for 2019-2020 #3*, ¶¶ 11-16, 442 P.3d 867, 869–70 (Colo. 2019). Such is the case here. The initiative carries out a simple and limited purpose and is therefore not contrary to the single-subject requirement.

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

The Petitioner complains that the Initiative must advise voters of existing state and local laws, particularly the measure’s interplay with home rule jurisdictions. 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 246, 256 (Colo. 2000). And a Title does not need to contain every detail of the proposal, nor is it 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). “Nor do we review the initiative’s ‘efficacy, construction, or future application,’ as those issues do not come up unless and until the voters approve the amendment.” *In re Title, Ballot Title and Submission Clause for 2013-2014 #89*, ¶10, 328 P.3d 172,176 (Colo. 2014).

Next, Petitioner complains that the question includes a non-exclusive list: “cooking, hot water systems, generators and heating systems” that may mislead rather than educate the voter. However, Petitioner specifically requested this list be included in the title in her Motion for Rehearing, “The Title for Initiative #284 does not apprise voters that (1) the measure lists cooking, hot water system, generators and heating systems as among the types of natural gas use to be

restricted.” Petitioner Mtn for Rehearing, p.3. Having requested the language at the hearing, the Petitioner cannot now complain that it is misleading. Furthermore, Petitioner’s statement that the list is non-exclusive is speculative and it is not a proper function of the Title Board to review the measure future application. *See Matter of Title, Ballot Title and Submission Clause for 2019-2020 #3*, 442 P.3d at 870.

Finally, Petitioner argues the measure only limits and supersedes conflicting state statute, but no local government laws. But the Petitioner’s argument again invites this Court to contravene existing law by requiring the Title Board to consider the possible future applications of the Initiative.

CONCLUSION

Respondents/Proponents Greg Kishiyama and Ned Southwick respectfully request the Court affirms the Title Board’s determination that the measure satisfies the single-subject and clear title requirements.

Respectfully submitted this 20th day of May 2020.

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CERTIFICATE OF SERVICE/MAILING

I hereby certify that on 20th day of May, 2020 a true and correct copy of the **RESPONDENTS’/PROPONENTS’ ANSWER 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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