

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED: May 6, 2020 4:55 PM</p>
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2019) Appeal from the Ballot 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, v.</p>	
<p>Respondents: Greg Kishiyama and Ned Southwick,</p>	<p>▲ COURT USE ONLY ▲</p>
<p>and</p>	
<p>Title Board: Theresa Conley, David Powell, and Jason Gelender.</p>	<p>Case No. 2020SA138</p>
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<p>THE TITLE BOARD'S OPENING 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, I certify 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 1,721 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).

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.

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

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW 1

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENT 2

ARGUMENT 3

 I. Standards governing titles set by the Board..... 3

 II. The proposed initiative contains a single subject..... 5

 A. Standard of review and preservation. 5

 B. The single subject requirement is met. 5

 III. The title set by the Board is not misleading and does not
 contain a catch phrase. 7

 A. Standard of review and preservation. 7

 B. The title accurately the measure. 8

CONCLUSION 10

TABLE OF AUTHORITIES

CASES

<i>In re Proposed Initiative on Trespass-Streams with Flowing Water,</i> 910 P.2d 21 (Colo. 1996).....	3, 9
<i>In re Title, Ballot Title & Submission Clause for 2013-2014 #90,</i> 2014 CO 63	7, 9
<i>In re Title, Ballot Title & Submission Clause for 2019-2020 #3,</i> 2019 CO 107	7
<i>In re Title, Ballot Title and Submission Clause for 2009-10 #45</i> (“ <i>In re #45</i> ”), 234 P.3d 642 (Colo. 2010).....	3, 9
<i>In re Title, Ballot Title and Submission Clause for 2009-10 #91,</i> 235 P.3d 1071 (Colo. 2010).....	3
<i>In re Title, Ballot Title and Submission Clause Pertaining to</i> <i>Casino Gambling Initiative,</i> 649 P.2d 303 (Colo. 1982)	3
<i>In re Title, Ballot Title, & Submission Clause for 2007-2008 #62,</i> 184 P.3d 52 (Colo. 2008).....	6
<i>In re Title, Ballot Title, & Submission Clause for 2011-2012 #45,</i> 2012 CO 26	5

<i>In re Title, Ballot Title, and Submission Clause for 2007-08 #62,</i> 184 P.3d 52 (Colo. 2008).....	4
<i>Matter of Title, Ballot Title and Submission Clause for 2019-2020</i> #3, 442 P.3d 867 (Colo. 2019).....	7
STATUTES	
§ 1-40-106(3)(b), C.R.S. (2019)	4

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- (1) Whether the Title Board correctly determined that Proposed Initiative 2019-2020 #297 contains a single subject.
- (2) Whether the title is misleading and fails to advise the voters of the central purpose of the measure.¹

STATEMENT OF THE CASE

Proponents Greg Kishiyama and Ned Southwick seek to circulate #297 to obtain the requisite number of signatures to place a measure on the ballot amend the Colorado Constitution. The proposed initiative seeks to prohibit state and local government restrictions or other limitations on the installation and use of natural gas except as required for safety purposes. Record filed April 22, 2020 (“Record”) at 2.

The Board concluded that the measure contained a single subject and proceeded to set a title at its April 1, 2020 meeting. *Id.* at 3. Petitioner Janette Susan Rose filed a timely motion for rehearing, arguing that #297 contained multiple subjects and that the title was

¹ This appeal raises substantially the same issues as *Rose v. Kishiyama et al.*, 2020SA137 (Colo. Filed Apr. 22, 2020), which concerns Proposed Initiative 2019-2020 #285.

misleading. *Id.* at 4–6. Proponents Messrs. Kishiyama and Southwick also filed a motion for rehearing requesting changes to the title set by the Board on April 1. *Id.* at 9–10.

On April 15, 2020, the Board granted both motions only to the extent that the Board made changes to the title and denied Petitioner’s motion in all other respects. *Id.* at 12.

SUMMARY OF ARGUMENT

The Board’s actions in setting #297 should be affirmed. The single subject of #297 is prohibiting state and local government restrictions or other limitations on the installation and use of natural gas except as required for safety purposes. The provisions of the measure that Petitioner challenges on single subject grounds are either necessarily and properly connected to that subject or constitute impermissible speculation about the possible effects of the measure.

Petitioner also challenges the clear titles in her petition for review. The title set by the Board is not misleading.

ARGUMENT

I. Standards governing titles set by the Board.

The Court does not demand that the Board draft the best possible title. *In re Title, Ballot Title and Submission Clause for 2009-10 #45* (“*In re #45*”), 234 P.3d 642, 645, 648 (Colo. 2010). The Court grants great deference to the Board in the exercise of its drafting authority. *Id.* The Court will read the title as a whole to determine whether the title properly reflects the intent of the initiative. *Id.* at 649 n.3; *In re Proposed Initiative on Trespass-Streams with Flowing Water*, 910 P.2d 21, 26 (Colo. 1996). The Court will reverse the Board’s decision only if the title is insufficient, unfair, or misleading. *In re #45*, 234 P.3d at 648.

The Court will “employ all legitimate presumptions in favor of the propriety of the Board’s actions.” *In re Title, Ballot Title and Submission Clause for 2009-10 #91*, 235 P.3d 1071, 1076 (Colo. 2010). Only in a clear case should the 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).

Section 1-40-106(3)(b), C.R.S., establishes the standards for setting titles, requiring they be fair, clear, accurate, and complete. *See In re Title, Ballot Title, and Submission Clause for 2007-08 #62*, 184 P.3d 52, 58 (Colo. 2008). The statute provides:

In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a “yes/for” or “no/against” vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly express the true intent and meaning thereof, together with the ballot title and submission clause, shall be completed...within two weeks after the first meeting of the title board. ...Ballot titles shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and, shall be in the form of a question which may be answered “yes/for” (to vote in favor of the proposed law or constitutional amendment) or “no/against” (to vote against the proposed law or constitutional amendment) and which shall unambiguously state the principle of the provision sought to be added, amended, or repealed.

§ 1-40-106(3)(b), C.R.S.

II. The proposed initiative contains a single subject.

A. Standard of review and preservation.

When this Court reviews “the Title Board’s single subject decision, [it] employ[s] all legitimate presumptions in favor of the propriety of the Title Board’s actions. [It] will only overturn the Title Board’s finding that an initiative contains a single subject in a clear case.” *In re Title, Ballot Title, & Submission Clause for 2011-2012 #45*, 2012 CO 26, ¶ 8 (quotation omitted). The Title Board agrees that Petitioner preserved the single subject issue by raising it in the motion for rehearing.

B. The single subject requirement is met.

The single subject of #297 is prohibiting state and local government restrictions or other limitations on the installation and use of natural gas except as required for safety purposes.

At the rehearing, Petitioner argued that the single subject test is not met because #297 does not apprise voters as to the myriad restrictions which the measure seeks to prohibit. Petitioner provided a list of potential consequences of the measure, including the fact that the measure could restrict:

(1) [R]equirements for the inspection of natural gas appliances, (2) constraints on downstream consumer use of patented or trademarked products using natural gas; (3) compliance with antitrust laws applicable to products using natural gas; (4) collection of state or local taxes on certain materials or products; (5) obligations to meet energy efficiency requirements in building codes; and (6) compliance with state greenhouse gas emission targets.

Record, p 5; *see also Petition for Review*, p 2.

This argument goes to the merits of the measure and does not weigh in favor of rejecting the measure on single-subject grounds. “In determining whether a proposed initiative comports with the single subject requirement, [the Court does] not address the merits of a proposed initiative, nor [does the Court] interpret its language or predict its application if adopted by the electorate.” *In re Title, Ballot Title, & Submission Clause for 2007-2008 #62*, 184 P.3d 52, 59 (Colo. 2008) (quotations omitted). Petitioner’s arguments concern the potential effects and consequences of the measure, which Petitioner argues will be far-reaching. *See Record*, p 5; *see also Petition for Review*, p 2.

But “the 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 Title, Ballot Title & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 17 (quotations and alterations omitted); *see also Matter of Title, Ballot Title and Submission Clause for 2019-2020 #3*, 442 P.3d 867, 870 (Colo. 2019) (“[T]o conclude that the initiative here comprises multiple subjects would require us to read language into the initiative that is not there and to address the merits of that initiative and suggest how it might be applied if enacted. As noted above, however, we are not permitted to do so.”). Therefore, the Board correctly found that #297 contains a single subject.

III. The title set by the Board is not misleading and does not contain a catch phrase.

A. Standard of review and preservation.

When considering a challenge to a title, the Court should not “consider whether the Title Board set the best possible title.” *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 17. Rather, the Court only “ensure[s] that the title fairly reflects the proposed initiative such that voters will not be misled into supporting or opposing the initiative because of the words that the Title Board

employed.” *Id.* The Board agrees that Petitioner preserved her challenge to the title of #297.

B. The title accurately the measure.

The Board’s title for #297 is not misleading. Number 297 prohibits state and local government restrictions or other limitations on the installation and use of natural gas except as required for safety purposes. The title designated by the Board is as follows: “An amendment to the Colorado constitution 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.” Record at p 12. Petitioner’s Petition argues that the title is misleading because:

- (a) 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;

(b) the measure prohibits state statutes, regulations and local governments from adopting restrictions on natural gas installation and use but specifies that it only modifies, limits and supersedes conflicting state statute or regulation and not local government laws;

(c) the title and the measure use the word “restrictions” but do not alert the voter to what the measure restricts in the context natural gas installation and use; and

(d) the title makes no mention of the measure’s applicability to home rule jurisdictions.

Petition at pp 3–4.

These arguments are without merit. The title as set by the Board accurately and properly reflects the intent of the initiative, and Petitioner’s arguments do not demonstrate how the title could be considered insufficient, unfair, or misleading. *See In re Proposed Initiative on Trespass-Streams with Flowing Water*, 910 P.2d at 26; *In re #45*, 234 P.3d at 648. Further, contrary to Petitioner’s third and fourth arguments (arguments (c) and (d)), “the Title Board is not required to explain the meaning or potential effects of the proposed initiative on the current statutory scheme.” *In re #90*, 328 P.3d at 162. Therefore, to be a proper, clear title, the title need not expound on the measure’s effects on natural gas installation or home rule jurisdictions.

CONCLUSION

The Court should affirm the decisions of the Title Board.

Respectfully submitted on this 6th day of May, 2020.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S OPENING BRIEF** upon the following parties or their counsel electronically via CCEF, at Denver, Colorado, this 6th day of May, 2020, addressed as follows:

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