

SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	
Original Proceeding Pursuant to Colo. Rev. Stat. §1-40-107(2) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2019- 2020 #300 Petitioner: TIMOTHY STEVEN HOWARD v. Respondents: GREG BROPHY AND SAM BRADLEY and Title Board: THERESA CONLEY; DAVID POWELL; and JASON GELENDER	▲ COURT USE ONLY ▲
<i>Attorneys for Petitioner</i> Martha M. Tierney, No. 27521 Tierney Lawrence LLC 225 E.16 TH AVE, SUITE 350 Denver, CO 80203 Phone: (720) 242-7577 E-mail: mtierney@tierneylawrence.com	Case No.:
PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2019-2020 #300	

Pursuant to Colo. Rev. Stat. § 1-40-107(2), registered Colorado elector Timothy Steven Howard (“Petitioner”) respectfully petitions this Court to review the title, ballot title, and submission clause set by the Ballot Title Setting Board for Proposed Initiative 2019-2020 #300.

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2019-2020 #300

The Title Board conducted its initial public hearing and set the title for Initiative #300 on April 15, 2020. Petitioner filed his timely motion for rehearing on April 22, 2020. The Title Board considered the motion at its April 23, 2020 hearing and denied the motion for rehearing in full.

B. Jurisdiction

Petitioner now timely seeks review by this Court of the Ballot Title Setting Board’s action pursuant to Colo. Rev. Stat. § 1-40-107(2). Petitioner also attaches to his Petition for Review certified copies of the final Proposed Initiative, the Title and Submission Clause, Fiscal Impact Statement, and the Motion for Rehearing and ruling thereon.

GROUND FOR APPEAL

The Title for #300 set by the Title Board violates the legal requirements imposed on the Board to comply with the single subject requirement in Colo.

Const. art. V, § 1(5.5), and the clear title requirement in Colo. Rev. Stat. § 1-40-106(3)(b). The following is an advisory list of issues to be addressed in Petitioner’s Opening Brief:

1. The Title Board lacked jurisdiction to set a title for Initiative #300 because the measure violates the single subject requirement. The measure amends the Colorado constitution by adding a new article that grants local governments the right to assume “all or part of the of the authority over oil and natural gas operations currently covered by article 60 of Title 34 of the Colorado Revised Statutes” within the geographic boundary of the local government, and, it limits a local government’s authority over oil and gas operations by placing in the constitution a prohibition on conveying to a local government the right to enact a moratorium on oil and gas operations.

2. If the Title Board had jurisdiction to set a title for Initiative #300, the title it set is legally flawed because the title fails to inform voters of certain central elements of Initiative #300, including the following:

(a) how local governments and the Colorado Oil and Gas Conservation Commission (“COGCC”) will share control over oil and gas operations if a local government only assumes “some” and not “all” of the COGCC’s regulatory authority;

(b) how a local governments “control” operates when its requirements are more stringent than the COGCC’s?

(c) how a local government's “control” operates when its requirements are less stringent than the COGCC’s?

(d) how enacting moratoria or not enacting moratoria on oil and gas operations is within the current regulatory authority of the COGCC?

PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties’ briefs, the Court determine that the Title Board lacked jurisdiction to set titles for the Proposed Initiative and order the Title Board to return this measure to the Proponents, in light of the initiative’s failure to comply with the single subject requirement in the Colorado Constitution. In the alternative, Petitioner asks the Court to direct the Title Board to correct the title to address the deficiencies outlined in the Petitioner’s Petition and briefs.

Respectfully submitted this 30th day of April 2020.

TIERNEY LAWRENCE LLC

By: s/Martha M. Tierney
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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April 2020 a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2019-2020 #300** was filed and served via the Colorado Courts E-Filing System to the following:

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Denver, Colorado 80203
Michael.kotlarczyk@coag.gov
Attorneys for Title Board

I hereby certify that on this 30th day of April 2020 a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2019-2020 #300** was served via email to the following:

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Attorneys for Respondents

s/Martha M. Tierney

In accordance with C.A.R. 30(f), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.



STATE OF COLORADO

DEPARTMENT OF STATE CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal impact statement and abstract, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2019-2020 #300 'Local Government Authority Pertaining to Oil and Natural Gas Development'".....

..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 27th day of April, 2020.

Jena Griswold

SECRETARY OF STATE



RECEIVED

By Steven Ward at 11:23 am, Mar 27, 2020

Initiative 2019-2020 #300 Local control of oil & gas operations.

Final draft

Be it Enacted by the People of the State of Colorado

**ARTICLE XXX
Local Control of Oil and Gas Activities.**

SECTION 1. The Constitution of the State of Colorado is amended by the **addition** of a new Article XXX as follows:

Section 1. LOCAL CONTROL OF OIL AND GAS ACTIVITIES

(1) ANY LOCAL GOVERNMENT WHICH CHOOSES TO DO SO MAY ASSUME WITHIN ITS BOUNDARIES ALL OR PART OF THE AUTHORITY OVER OIL AND NATURAL GAS OPERATIONS CURRENTLY COVERED BY ARTICLE 60 OF TITLE 34 OF THE COLORADO REVISED STATUTES, OR ANY SUCCESSOR STATUTES.

(2) LOCAL GOVERNMENTS MAY ENTER INTO INTERGOVERNMENTAL AGREEMENTS FOR REGIONAL COORDINATION OF CONTROL OF OIL AND GAS ACTIVITIES GRANTED UNDER THIS ARTICLE XXX

(3) FOR PURPOSES OF THIS ARTICLE XXX, "LOCAL GOVERNMENT" MEANS A COUNTY, COUNTY & CITY OR MUNICIPALITY REGARDLESS OF HOME RULE STATUS.

(4) NOTHING IN THIS ARTICLE CONVEYS THE RIGHT FOR A LOCAL GOVERNMENT TO ENACT A MORATORIUM.

Ballot Title Setting Board

Proposed Initiative 2019-2020 #300¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution allowing counties and municipalities to assume some or all of the Oil and Gas Conservation Commission’s regulatory authority over oil and natural gas operations within their boundaries, and, in connection therewith, authorizing counties and municipalities to regionally coordinate control of such operations and specifying that counties and municipalities are not granted the right to enact moratoriums on such operations.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution allowing counties and municipalities to assume some or all of the Oil and Gas Conservation Commission’s regulatory authority over oil and natural gas operations within their boundaries, and, in connection therewith, authorizing counties and municipalities to regionally coordinate control of such operations and specifying that counties and municipalities are not granted the right to enact moratoriums on such operations?

Hearing April 15, 2020:

Single subject approved; staff draft amended; titles set.

The Board determined that the proposed initiative adds language to the state constitution. The requirement for approval by fifty-five percent of the votes cast applies to this initiative.

Hearing adjourned 3:55 p.m.

¹ Unofficially captioned “**Local Government Authority Pertaining to Oil and Natural Gas Development**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

RECEIVED

By Steven Ward at 4:33 pm, Apr 22, 2020

COLORADO TITLE SETTING BOARD

**IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR PROPOSED INITIATIVE 2019-2020 #300**

MOTION FOR REHEARING ON PROPOSED INITIATIVE 2019-2020 #300

On behalf of Timothy Steven Howard, registered elector of the State of Colorado, the undersigned counsel hereby submits to the Title Board this Motion for Rehearing on Proposed Initiative 2019-2020 #300 (“Initiative #300”) pursuant to Section 1-40-107, C.R.S. (2019), and as grounds therefore state as follows:

I. THE TITLE SET BY TITLE BOARD AT APRIL 15, 2018 HEARING

On April 15, 2020, the Title Board set the following ballot title and submission clause for Initiative #300:

Shall there be an amendment to the Colorado constitution allowing counties and municipalities to assume some or all of the Oil and Gas Conservation Commission’s regulatory authority over oil and natural gas operations within their boundaries, and, in connection therewith, authorizing counties and municipalities to regionally coordinate control of such operations and specifying that counties and municipalities are not granted the right to enact moratoriums on such operations?

II. GROUND FOR REHEARING

A. The Initiative Impermissibly Contains Several Separate and Distinct Subjects in Violation of the Constitutional and Statutory Single Subject Requirement.

Under article V, section 1(5.5) of the Colorado constitution and section 1-40-106.5, C.R.S., proposed ballot measures must contain only a single subject. “[T]he Board may not set the titles of a proposed Initiative, or submit it to the voters, if the Initiative contains multiple subjects.” *Aisenberg v. Campbell (In re Title, Ballot Title & Submission Clause 1990-2000 #104)*, 987 P.2d 249, 253 (Colo. 2000).

The single subject requirement prevents two dangers. First, combining subjects with no necessary or proper connection for the purpose of garnering support for the initiative from various factions -- that may have different or even conflicting interests -- could lead to the enactment of measures that would fail on their own merits. See *In re Proposed Initiative 2001-02 No. 43*, 46 P.3d 438, 442 (Colo. 2002); see § 1-40-106.5(1)(e)(I). Second, the single subject requirement is intended to “prevent surprise and fraud from being practiced upon voters caused

by the inadvertent passage of a surreptitious provision ‘coiled up in the folds’ of a complex initiative.” *Id.*

Initiative #300 contains at least two separate subjects, in violation of article V, section 1(5.5) of the Colorado constitution and section 1-40-106.5, C.R.S. The Initiative does the following:

At the initial Title Board hearing on April 15th, Proponents asserted that single subject of the measure is the “local control of oil and gas operations.” In subsection 1, Initiative #300 purports to amend the Colorado constitution by adding a new article that grants local governments the authority to assume “all or part of the of the authority over oil and natural gas operations currently covered by article 60 of Title 34 of the Colorado Revised Statutes” within the geographic boundary of the local government. This would appear to be the Initiative’s principal purpose and subject.

In subsections 2 and 3, the measure then allows local governments to enter into intergovernmental agreements for regional coordination of control of oil and gas activities and defines the term “local government.” These would appear to be implementation details that flow from the measure’s single subject.

In subsection 4, however, the measure says that it does not convey the right for a local government to enact a moratorium. Subsection 4 is not an enforcement or implementation detail and instead does the complete opposite of what the single subject of the measure purports to do – give local control of oil and gas operations to local governments. Additionally, article 60 of title 34 of Colorado Revised Statutes does not give local governments the right to enact moratoria. Moratoria, therefore, has no connection to the Oil and Gas Conservation Commission’s (“COGCC”) regulatory authority over oil and natural gas operations. Instead, it appears Proponents included this provision for the purpose of garnering support for their measure from particular voters.

This second subject in proposed Initiative #300 does what the Supreme Court has said that the single subject requirement is designed to prevent: “engaging in 'log rolling' or 'Christmas tree' tactics in which proponents attempt to garner support for their initiative from "various factions which may have different or even conflicting interests." *In re Proposed Initiative on "Public Rights in Water II"* 898 P.2d 1076, 1079 (Colo. 1995). It is entirely likely that supporters of local control over oil and gas development would not support denying all rights for a local government to adopt a moratorium on such oil and gas development. Similarly, supporters of prohibiting moratoria by local governments on oil and gas development are not likely to be the same voters who support granting local control of oil and gas development to local governments.

B. The Ballot Title and Submission Clause Is Misleading, and Does Not Correctly and Fairly Express Its True Intent and Meaning.

The title of the Initiative #300 is misleading and does not correctly and fairly express the initiatives' true intent and meaning. Section 1-40-106(3)(b), C.R.S. 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" or "no" 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. . . .

The title of Initiative #300 misleads the voters by failing to inform them of the following: (1) how local governments and the COGCC might share control over oil and gas operations if a local government only assumes “some” and not “all” of the COGCC’s regulatory authority; (2) what happens to a local governments “control” if its requirements are more stringent than the COGCC’s? (3) what happens to a local government's “control” if its requirements are less stringent than the COGCC’s?

The title of Initiative #300 is also misleading because it suggests that enacting moratoria on oil and gas operations is within the current regulatory authority of the COGCC.

The title does not enable voters to make an informed choice because it does not correctly and fairly express its true intent and meaning.

III. CONCLUSION

Based on the foregoing, Timothy Steven Howard requests a rehearing of the Title Board for Initiative 2019-2020 #300, because the initiative contains multiple subjects, and the title is misleading to voters because it fails to fairly express the initiative’s true meaning and intent. As a result, the Title Board lacks jurisdiction to set a title and should return the measure to the proponents.

Respectfully submitted this 22nd day of April 2020.

TIERNEY LAWRENCE LLC

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ATTORNEYS FOR OBJECTOR

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 22nd day of April, 2020, a true and correct copy of **MOTION FOR REHEARING ON PROPOSED INITIATIVE 2019-2020 #300** was filed and served via email or U.S. mail, postage prepaid, to the following:

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/s/ Martha M. Tierney

Ballot Title Setting Board

Proposed Initiative 2019-2020 #300¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution allowing counties and municipalities to assume some or all of the Oil and Gas Conservation Commission’s regulatory authority over oil and natural gas operations within their boundaries, and, in connection therewith, authorizing counties and municipalities to regionally coordinate control of such operations and specifying that counties and municipalities are not granted the right to enact moratoriums on such operations.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution allowing counties and municipalities to assume some or all of the Oil and Gas Conservation Commission’s regulatory authority over oil and natural gas operations within their boundaries, and, in connection therewith, authorizing counties and municipalities to regionally coordinate control of such operations and specifying that counties and municipalities are not granted the right to enact moratoriums on such operations?

Hearing April 15, 2020:

Single subject approved; staff draft amended; titles set.

The Board determined that the proposed initiative adds language to the state constitution. The requirement for approval by fifty-five percent of the votes cast applies to this initiative.

Hearing adjourned 3:55 p.m.

Rehearing April 23, 2020:

Motion for Rehearing denied in its entirety.

Hearing adjourned 4:15 p.m.

¹ Unofficially captioned “**Local Government Authority Pertaining to Oil and Natural Gas Development**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

Initiative # 300

INITIAL FISCAL IMPACT STATEMENT

Date: April 14, 2020

Fiscal Analyst: Max Nardo (303-866-4776)

LCS TITLE: LOCAL GOVERNMENT AUTHORITY PERTAINING TO OIL AND NATURAL GAS DEVELOPMENT

Disclaimer. *This initial fiscal impact statement has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff may revise this estimate for the ballot information booklet (Blue Book) if new information becomes available.*

Summary of Measure

The measure amends the Colorado Constitution to allow any local government to assume part or all of the authority over oil and gas operations currently held by the Colorado Oil and Gas Conservation Commission (COGCC) in the Department of Natural Resources. Local governments are authorized to enter into intergovernmental agreements for regional coordination of oil and gas regulation. Local governments are not authorized by the measure to enact moratoriums on oil and gas development

Background

State and local regulation of oil and natural gas. Under current law, state regulators have primary responsibility for regulating the development of oil and natural gas in Colorado. The COGCC is the state agency that establishes and enforces these regulations. Local governments have the ability to regulate the surface impacts of oil and gas operations; zone land use for mineral resource development; site, monitor, and inspect oil and gas facilities; and to impose fees for the cost of regulation, and fines for leaks, spills, and emissions.

State Revenue and Expenditures

The measure may affect the amount of severance tax, royalty payments, and lease revenue that the state government collects in the future. The measure's revenue impact will depend on the type of regulations, if any, that local governments enact, and the effects those regulations have on overall production of oil and natural gas resources. Since these conditions are unknowable, the change in state revenue cannot be estimated.

Department of Natural Resources. Severance tax revenue received by the state funds both general operating expenses of state government and specific programs in the Department of Natural Resources, including water supply project grants and loans, low-income energy assistance, control of invasive species, and a variety of other programs.

Local Government Impact

The measure may affect local government property tax revenue as well as the amount of severance tax revenue that state government collects and then shares with those local governments most directly impacted by oil and natural gas development. The measure's impact on local revenue and expenditures will depend on the type of regulations, if any, a local government chooses to adopt. Local regulatory programs will increase a local government's expenditures. Since the type and location of potential regulations adopted at the local level are unknowable, the change in local revenue and expenditures cannot be estimated.

Economic Impact

Economic impacts will depend on the regulations enacted by local governments. Local regulations that reduce regulatory costs on oil and gas development or otherwise allow more development may increase employment in the industry, create greater demand for associated services, increase rent and royalty income to mineral owners, increase profits for operators, and increase state and local government tax revenue. Increased oil and gas development may have adverse health and environmental impacts, which may impact employment or industry activity in other areas of the economy. Conversely, local regulations that restrict activity or increase regulatory costs will have the opposite effects.

Effective Date

If approved by voters at the 2020 general election, this measure takes effect upon proclamation of the Governor, no later than 30 days after the official canvass of the vote is completed.

State and Local Government Contacts

Natural Resources

Public Health and Environment

Municipalities

Local Affairs

Counties

Law

Abstract of Initiative 300: LOCAL GOVERNMENT AUTHORITY PERTAINING TO OIL AND NATURAL GAS DEVELOPMENT

The abstract includes estimates of the fiscal impact of the proposed initiative. If this initiative is to be placed on the ballot, Legislative Council Staff will prepare new estimates as part of a fiscal impact statement, which includes an abstract of that information. All fiscal impact statements are available at www.ColoradoBlueBook.com and the abstract will be included in the ballot information booklet that is prepared for the initiative.

This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of April, 2020, identifies the following impacts:

State revenue and expenditures. The measure may affect the amount of severance tax, royalty payments, and lease revenue that the state government collects in the future. The measure's revenue impact will depend on the type of regulations, if any, that local governments enact, and the effects those regulations have on the overall production of oil and natural gas resources. Since these conditions are unknowable, the change in state revenue cannot be estimated.

Local government impact. The measure may affect local government property tax revenue as well as the amount of severance tax revenue that state government collects and then shares with those local governments most directly impacted by oil and natural gas development. The measure's impact on local revenue and expenditures will depend on the type of regulations, if any, a local government chooses to adopt. Local regulatory programs will increase a local government's expenditures. Since the type and location of regulations adopted at the local level are unknowable, the change in local revenue and expenditures cannot be estimated.

Economic impacts. Economic impacts will depend on the regulations enacted by local governments. Local regulations that reduce regulatory costs on oil and gas development or otherwise allow more development may increase employment in the industry, create greater demand for associated services, increase rent and royalty income to mineral owners, increase profits for operators, and increase state and local government tax revenue. Increased oil and gas development may have adverse health and environmental impacts, which may impact employment or industry activity in other areas of the economy. Conversely, local regulations that restrict activity or increase regulatory costs will have the opposite effects.