

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	
<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	▲ COURT USE ONLY ▲ Case No.: 2020SA155
PETITIONER'S ANSWER BRIEF	

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 C.A.R. 28(g). It contains 1935 words.

Further, the undersigned certifies that the brief complies with C.A.R. 28(k).

For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R.___, p.___), not to an entire document, where the issue was raised and ruled on.

For the party responding to the issue:

X It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review 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 and C.A.R. 32.

By: s/Martha M. Tierney

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

SUMMARY OF ARGUMENT

The Title Board erred in determining that Initiative #300 contains a single subject. The Initiative purports to amend the Colorado Constitution by adding a new article XXX titled “Local Control of Oil and Gas Activities.” The new article 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. The measure also allows local governments to enter into intergovernmental agreements for regional coordination of control of oil and gas activities and defines the term “local government. Finally, the measure states that nothing in the article conveys the right for a local government to enact a moratorium.

This last provision creates the danger of logrolling because the Respondents attempted to garner support for their initiative from various factions which may have different or event conflicting interests. The Initiative may attract a "yes" vote

from voters who are unhappy with the current state level control of oil and gas activities and would support granting some or all of that authority to local governments, but who might oppose restricting the authority to enact moratoria, or vice versa. The Initiative violates the single subject rule because, by authorizing broad local control of oil and gas operations and restricting that authority by clarifying that the measure does not convey the right for a local government to enact a moratorium, the Initiative seeks to garner support from differing factions of voters.

The title is unclear and misleading because it makes no mention of how the measure significantly alters present law when a local government only assumes “some” and not “all” of the COGCC’s regulatory authority; or how a local government’s “control” alters state law or regulations if the local government’s requirements are more stringent or less stringent than the COGCC’s. Finally, the measure defines “local government” to mean a county, county and city or municipality regardless of home rule status – and the title does not alert the voter to that specific change in the home rule doctrine.

Titles and submission clauses should enable the electorate, whether familiar or unfamiliar with the subject matter of an initiative, to determine intelligently whether to support or oppose such a proposal. Here, the title for Initiative #300 is

one for which the general understanding of the effect of a "yes" or "no" vote will be unclear.

Initiative #300 should be set aside because the measure violates the single subject requirement and the title as set is misleading, therefore, the decision of the Title Board should be overturned.

ARGUMENT

I. THE INITIATIVE VIOLATES THE SINGLE SUBJECT REQUIREMENT.

A. Standard of Review.

The Title Board and the Respondents partially state the correct standard of review but leave out that this Court must “sufficiently examine an initiative to determine whether a measure violates the single subject rule[.]” and, “when necessary, characterize a proposal sufficiently to enable review of the Board's actions.” *In re Title & Ballot Title & Submission Clause for 2005-2006 # 55*, 138 P.3d 273, 278 (Colo. 2006) (Coats, J., dissenting) (collecting cases).

Respondents and the Title Board agree that Petitioner preserved this argument for appeal.

B. The Initiative Violates the Single Subject Requirement Because the Proponents Engaged in Logrolling Tactics.

Colo. Const. art. V, §1(5.5)'s single subject requirement 'is intended to ensure that each proposal depends upon its own merits for passage.'" *Johnson v. Curry (In re Title, Ballot Title and Submission Clause for 2015-2016 #132)*, 374 P.3d 460, 465 (Colo. 2016), quoting *In re Proposed Initiative on Public Rights in Waters II*, 898 P.2d 1076, 1078 (Colo. 1995). This "prevents proponents from engaging in 'log rolling' tactics, that is, combining multiple subjects into a single initiative in the hope of attracting support from various factions that may have different or even conflicting interests." *Johnson, id.*, citing §1-40-106.5(e)(I), C.R.S. (2019).

Here, Initiative #300 combines multiple subjects in the hopes of attracting support from various factions.

The plain language of the Initiative states, in relevant part,

(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.

Proposed Initiative #300, §1. In their Opening Brief, Respondents assert that the single subject of the Initiative is to "allow[] local governments to assume all or part of the authority over oil and gas operations afforded to the COGCC by the Oil and

Gas Conservation Act, C.R.S. §§ 34-60-101 to -301.” *See Respondents’ Open. Brf., p. 7.* (emphasis supplied). Article 60 of title 34 of Colorado Revised Statutes, however, does not grant local governments the right to enact moratoria. Nonetheless, Respondents included Section 4 in proposed Initiative #300, which states that “[n]othing in this article conveys the right for a local government to enact a moratorium.” By including this Section 4 language, the Respondents seek to garner support from those who favor more oil and gas development and do not favor moratoria on oil and gas development. By including the Section 1 language, the Respondents seek to garner support from those who favor less oil and gas development and believe that moving this authority to their local government will bring that result. Section 1 and Section 4 of the proposed Initiative contain two separate subjects.

Initiative #300 does what the Supreme Court has said that the single subject requirement is designed to prevent: “‘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.” *Waters II*, 898 P.2d at 1079.

Respondents and the Title Board seek to downplay this concern by suggesting that the Section 4 language merely prescribes the scope of the Initiative.

Title Board Open. Brf. p. 7, Respondents' Open. Brf. p. 9. But the plain language of Section 1 of the Initiative belies this explanation. Instead, Initiative #300 creates a danger of log rolling because the Initiative may attract a "yes" vote from voters who are unhappy with the current state level control of oil and gas activities and would support granting some or all of that authority to local governments, but who might oppose restricting the authority to enact moratoria, or vice versa. *See In re Initiative for 2013-2014 #76*, 333 P.3d 76, 79 (Colo. 2014). Because moratoria have no necessary connection to the COGCC's regulatory authority over oil and natural gas operations, it suggests that Respondents included the Section 4 language solely for the purpose of garnering support for their measure from particular voters. This they cannot do. The decision of the Title Board should be overturned because the Initiative violates the single subject requirement.

II. THE TITLE DOES NOT CORRECTLY AND FAIRLY EXPRESS THE TRUE INTENT AND MEANING OF THE MEASURE.

A. Standard of Review.

The Title Board and the Respondents mostly state the correct standard of review for review of a title, but leave out that “the title should enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to intelligently determine whether to support or oppose such a proposal.”

Milo v. Coulter (In re Title, Ballot Title & Submission Clause for 2013-2014 #129), 333 P.3d 101, 105 (Colo. 2014).

The Title Board and the Respondents agree that Petitioner preserved this argument for appeal.

B. The Title and Submission Clauses Are Misleading.

While the Title Board is not required to set out every detail of the measure in the title, *In re Title, Ballot Title, and Submission Clause for 2001-02 #21 and #22*, 44 P.3d 213, 222 (Colo. 2002), ballot titles should “alert voters to the fact that some of the proposed changes would significantly alter” present law.

Hayes v. Spalding (In re Title, Ballot Title and Submission Clause for 2015-2016 #73), 369 P.3d 565, 570 (Colo. 2016). Here, the title for Initiative #300 fails to alert voters as to how the measure will significantly alter present law.

For example, the title makes no mention of how the measure significantly alters present law if a local government only assumes “some” and not “all” of the COGCC’s regulatory authority; or how a local government’s “control” alters state law or regulations if the local government’s requirements are more stringent or less stringent than the COGCC’s. Most notably, the measure defines “local government” to mean a county, county and city or municipality regardless of home

rule status – and the title does not alert the voter that the measure alters the home rule doctrine.

Although the title tracks the wording used in the measure, that is not enough to ensure that voters have adequate information “to determine intelligently whether to support or oppose such a proposal.” *Hayes*, 369 P.3d at 570, citing *In re Title, Ballot Title, Submission Clause & Summary Pertaining to a Proposed Initiative on “Obscenity,”* 877 P.2d 848, 850 (Colo. 1994).

Respondents contend that the title “properly describes” all four of the Initiative’s subsections. *Respondents’ Open. Brf. p. 12*. This is inaccurate. Nowhere does the title mention the key provision in the Initiative that “‘local government’ means a county, county & city or municipality regardless of home rule status.” Initiative, Section 3. Emphasis supplied. This omission renders the title misleading.

While the title is not inconsistent with the Initiative, it is so general that it does not contain sufficient information to enable voters to determine intelligently whether to support or oppose the initiative. *Hayes*, 369 P.3d at 570. 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 Title, Ballot Title & Submission*

Clause for Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238, 242 (Colo. 1990)). Here, the title for Initiative #300 is one for which the general understanding of the effect of a "yes" or "no" vote will be unclear.

CONCLUSION

The Petitioner respectfully requests that the Court overturn the actions of the Title Board with regard to Proposed Initiative 2019-2020 #300.

Respectfully submitted this 29th day of May 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of May 2020 a true and correct copy of the foregoing **PETITIONER'S ANSWER BRIEF** was filed and served via the Colorado Courts E-Filing System to the following:

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