

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

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Case No.: 2020SA155

RESPONDENTS' 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 those rules. Specifically, the undersigned certifies that:

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

It contains **1,310** words (answer briefs must not exceed 5,700 words).

The brief complies with the standard of review requirements in C.A.R. 28(a)(7)(A) and/or 28(b).

In response to each issue raised, Respondents' Opening Brief provided, under a separate heading before the discussion of the issue, a statement of the applicable standard of review with citation to authority and statements whether the issue was preserved.

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/ Eric P. Waeckerlin

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Greg Brophy and Sam Bradley (jointly, “Proponents” or “Respondents”), registered electors of the State of Colorado, through their undersigned counsel, respectfully submit this Answer Brief in support of the title, ballot title and submission clause (jointly, the “Titles”) that the Title Board set for Proposed Initiative 2019-2020 #300 (the “Initiative” or “Measure”) at a hearing on April 15, 2020.

ARGUMENT

I. The Initiative Contains a Single Subject.

A. Petitioner’s arguments are based on his incorrect assertion that the Initiative restricts a local government’s authority to enact a moratorium.

The single subject of Initiative #300 is an amendment to the Colorado Constitution allowing local governments to assume all or part of the authority over oil and gas operations afforded to the Colorado Oil and Gas Conservation (the “COGCC”) by the Oil and Gas Conservation Act (the “Act”), C.R.S. §§ 34-60-101 to -301. Petitioner concedes that Subsection 4 of the Initiative “clarif[ies] that the measure does not convey the right for a local government to enact a moratorium.” Pet. Opening Brief at 4. Yet, Petitioner simultaneously argues that Subsection 4

somehow also “restrict[s]” a local government’s authority.¹ *Id.* at 4, 9. Petitioner cannot have it both ways.

The clarifying language in Subsection 4 does not impose any restrictions on a local government’s authority to control oil and gas operations. Rather, it simply clarifies that the local control authority being granted by the Initiative does not, and may not be construed to, include additional authority to impose a moratorium on oil and gas operations. Stated another way, Subsection 4 is entirely dependent on the Initiative’s single subject.

Subsection 1 of the Initiative recognizes that local governments’ authority to regulate oil and gas operations derives from the Act and any successor statutes. Subsection 4 clarifies that passage of the Initiative should not be construed as granting an additional right for local governments to enact moratoria; such authority must derive from the Act itself or any successor statutes. Moreover, whether the Act currently allows local governments to enact moratoria on oil and gas operations is irrelevant to whether the Initiative contains a single subject. *See* Section II, *infra*. Because the plain language of Subsection 4 simply clarifies the scope of authority being granted and is directly tied to the central focus of the

¹ Under Petitioner’s position, any initiative that grants limited authority to a regulatory body would contain two subjects: (1) the grant of authority and (2) the limitation on the grant of authority. The Court should reject this absurd result.

Initiative, it does not constitute a separate subject. *In re Title, Ballot Title and Submission Clause for 2009-2010 # 45*, 234 P.3d 642, 646 (Colo. 2010) ("An initiative may contain several purposes, but they must be interrelated

Implementing provisions that are directly tied to the initiative's central focus are not separate subjects.") (Internal citation omitted).

B. Petitioner has not demonstrated that the Initiative engages in impermissible “log rolling” or “Christmas tree” tactics.

One of the purposes of the single subject requirement is to prevent “log rolling” or “Christmas tree” tactics that would place “voters in the position of voting for some matter they do not support to enact that which they do support,” *In re Title, Ballot Title & Submission Clause for 2009-2010 # 91*, 235 P.3d 1071, 1079 (Colo. 2010), thereby “attracting support from various factions which may have different or even conflicting interests.” *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, 1079 (Colo.1995). In other words, the single subject requirement ensures that “each proposal depends on its own merits for passage.” *In re Title, Ballot Title & Submission Clause for Proposed Initiative 2001-02 # 43*, 46 P.3d 438, 441 (Colo. 2002).

Petitioner’s arguments concerning log rolling are without merit. Petitioner’s argument hinges on speculation that Subsection 4 of the Initiative may encourage

voters who support local control over oil and gas operations to vote for the Measure when those same voters would not support “denying all rights for local governments to adopt a moratorium.” Pet. Opening Brief at 9-10. Petitioner’s circuitous argument misconstrues the Initiative. As discussed above, Subsection 4 does not deny local governments the authority to enact moratoria despite Petitioner’s wish that it did so; it simply clarifies that the Initiative itself does not convey such authority, which Petitioner himself appears to concede. *See id.* at 4.

Petitioner’s argument is also premised on pure speculation about voters’ motivations. Fortunately, this Court need not engage in such hypothetical conjecture. It need only decide whether the plain language of the Initiative is clear, which it is. If a voter wants to extend some or all of COGCC’s authority to a local government, the voter will vote “yes.” If a voter does not want to extend such authority, the voter will vote “no.” Either way, the voter will be informed about the consequences of her vote, including that the Initiative does not include the authority to enact a moratorium.

II. Petitioner has not Demonstrated that the Titles are Misleading.

Petitioner also argues that whether or not a voter is familiar with how oil and gas operations are presently regulated by the COGCC under the Act, the voter would not be able to ascertain how the Initiative would “significantly” alter current

law. Pet. Opening Brief at 14. Again, Petitioner’s argument is without merit and would require this Court to ignore the plain language of the Initiative and engage in speculation about voter behavior. On its face, the Initiative does not seek to alter current law—the Act—in terms of substance; rather, it simply alters who may assume the authority to implement the Act’s substantive provisions. The Titles are clear that a “yes” vote would allow local governments to assume some or all of the COGCC’s regulatory authority over oil and gas operations under the Act, whatever that authority may be.

Petitioner’s real issue here appears to be that he believes that the Titles should explain how the Initiative will interact with other state laws if enacted, *e.g.*, “how a local government’s ‘control’ will alter state law or regulations *if* the local government’s requirements are more or less stringent than the COGCC’s.”² Pet. Opening Brief at 13 (emphasis added). This Court has repeatedly refused to engage in such speculation when determining whether an initiative satisfies the clear title requirement. The practical nature of a local government’s regulation of oil and gas operations and the Initiative’s effect on other constitutional or statutory provisions

² Petitioner also confusingly argues the Titles do not explain how the Initiative’s definition of local government changes the “home rule doctrine.” The Titles do not explain this because the Initiative does not change the home rule doctrine. Any mention of the home rule doctrine would confuse, not assist, voters’ understanding of the effects of the Initiative if it becomes law.

are outside the scope of this Court’s review. See *In re Title, Ballot Title & Submission Clause, & Summary Approved on April 6, 1994, for Proposed Initiated Constitutional Amendment Concerning “Fair Fishing”*, 877 P.2d 1355, 1362 (Colo. 1994) (“Although detailed information regarding the state of the law and the effect of the proposed amendment on current law is not set forth in the summary, the Board is not required to state the effect that the measure will have on other constitutional or statutory provisions.”); *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 200A*, 992 P.2d 27, 30 (Colo. 2000) (finding that it is not the role of the Title Board or the reviewing court to determine “the initiative's efficacy, construction, or future application—that is a matter for judicial determination in a proper case should the voters approve the initiative.”).

CONCLUSION

This Court should affirm the decisions of the Title Board.

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, I electronically filed a true and correct copy of the foregoing **Respondent's Answer Brief** with the Clerk via the Colorado Courts E-Filing System which will send notification of such filing and service upon the following:

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