

<p>COLORADO SUPREME COURT 2 East 14<sup>th</sup> Ave. Denver, Colorado 80203</p> <hr/> <p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2019-2020) Appeal from the Ballot Title Board</p> <hr/> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2019- 2020 #300 (“Local Government Authority Pertaining to Oil and Natural Gas Development”)</p> <p><b>Petitioner:</b> Timothy Steven Howard,</p> <p><b>v.</b></p> <p><b>Respondents:</b> Greg Brophy and Sam Bradley,</p> <p><b>and</b></p> <p><b>Title Board:</b> Theresa Conley, David Powell, and Jason Gelender.</p>	<p>^ COURT USE ONLY ^</p>
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<p><b>THE TITLE BOARD’S ANSWER BRIEF</b></p>	

## CERTIFICATE OF COMPLIANCE

I 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:

- A. The brief complies with the word limits set forth in C.A.R. 28(g) because it contains 895 words.
- B. The brief complies with C.A.R. 28(a)(7) because for each issue the Title Board's Opening Brief contains, under a separate heading, a statement of the applicable standard of review with citation to authority, statements whether the issue was preserved, and if preserved, the precise location in the record where the issue was raised.

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/ Anne M. Mangiardi*

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The Colorado Title Board (“Board”), by and through undersigned counsel, hereby submits its Answer Brief.

### **SUMMARY OF THE ARGUMENT**

The proposed initiative contains only one subject—local control of oil and gas development. Petitioner alleges that the final paragraph of the initiative, which states “nothing in this article conveys the right for a local government to enact a moratorium,” record, p. 2, is improper “logrolling.” Record, p. 5. This paragraph relates to the single subject of the proposed measure and simply clarifies the scope of the initiative. There is no logrolling here. The proposed amendment contains a single subject.

Petitioner alleges the title is misleading because it does not address questions Petitioner has raised about the legal effects and implementation of the proposed constitutional amendment. The title set by the Board accurately summarizes the substance of the initiative and is not misleading.

The Board’s action in setting the title for #300 should be affirmed.

## ARGUMENT

### I. The measure contains a single subject, and does not raise risk of “logrolling.”

Petitioner argues that this measure carries a risk of logrolling.

“Logrolling” is “the practice of ‘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—in order to lead to the enactment of measures that would fail on their own merits.’” *In re Matter of Title, Ballot Title & Submission Clause for 2017-2018 #4*, 395 P.3d 318, 321 (Colo. 2017) quoting *In re Title, Ballot Title, and Submission Clause for 2011–2012 #3*, 274 P.3d 562, 566 (Colo. 2012).

There is no logrolling here. Every paragraph of the measure relates to a single subject. *In re #4*, 395 P.3d at 321 (logrolling involves combination of “subjects with no necessary or proper connection”). The final paragraph of the initiative states only what the proposed initiative does not do: “Nothing in this article conveys the right for a local government to enact a moratorium.” Record, p. 2. This paragraph is

consistent with the single purpose of #300—the transfer of regulatory authority for oil and gas from the Colorado Oil and Gas Conservation Commission (“COGCC”) to local governments.

Petitioner speculates that “[i]t 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.” Pet. Op. Br. p. 9. But voters from different political parties and areas of the state may support local control of oil and gas, and therefore vote “yes” on the proposed initiative, even if those voters disagree on the wisdom of a moratorium. There is no risk that voters who generally oppose local control would vote for the measure because it does not also grant local governments authority to ban oil and gas development. The ballot title should be affirmed.

**II. The ballot title is not misleading.**

**A. Petitioner’s Opening Brief adds a new element to the Second Issue Presented, which was not preserved.**

The second issue presented in the Petition sets out four elements that Petitioner maintains should be included in the ballot title: (1) how local governments would share authority with the COGCC; (2 and 3) how local control would operate when local standards are more (or less) strict than COGCC standards; and (4) how enacting (or not) “moratoria on oil and gas operations is within the current regulatory of the COGCC.” Petition, pp. 2-3.

Petitioner’s Opening Brief adds an additional element, which was not mentioned in the Petition: “how the Initiative 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 these specific changes in the home rule doctrine.” Pet. Op. Br. pp. 1-2, 13. This element was also not raised in Petitioner’s motion for rehearing



or at the rehearing itself. *See*, Record, p. 6.<sup>1</sup> The Court should not reach this new issue, which was raised for the first time in Petitioner’s Opening Brief.

**B. The ballot title accurately summarizes the initiative.**

Each of the elements contained in the second issue presented relates to potential legal effects the initiative may have, if enacted by voters. Such hypothetical questions about future implementation are outside the scope of the Board’s role in setting title. *In re Title, Ballot Title, & Submission Clause for 2013-2014 #89*, 328 P.3d 172, 179 (Colo. 2014); *see also In re Title, Ballot Title & Submission Clause for a Petition on Sch. Fin.*, 875 P.2d 207, 210 (Colo. 1994).

Petitioner’s Opening Brief alleges the proposed measure effects a “specific change in the home rule doctrine,” but fails to provide any detail as to how the initiative would change the home rule doctrine.

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<sup>1</sup> *Hearing Before Title Board on Proposed Initiatives 2019-2020 #300, #301* (April 23, 2020), available at <https://tinyurl.com/yctt99fp> (timestamp 2:48:19-3:08:58).

Indeed the Opening Brief fails to even define the “home rule doctrine.”  
Pet. Op. Br., p. 13. This newly raised issue, even if properly preserved,  
is also a question about the legal effects of the proposed measure, and  
outside the scope of the Title Board’s role in setting title. *In re #89*, 328  
P.3d at 179.

The title set by the Board should be affirmed.

### CONCLUSION

For the foregoing reasons, the Court should affirm the Board’s  
actions in setting the title for Initiative #300.

Respectfully submitted this 29th day of May, 2020.

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Attorney General

*s/ Anne M. Mangiardi*

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## CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S ANSWER BRIEF** upon the following parties or their counsel electronically via Colorado Courts E-Filing, at Arvada, Colorado, this 29th day of May, 2020, addressed as follows:

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*s/ Andrea DeHart*

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