

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 #301 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.: 2020SA156
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 1115 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:

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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STATUTES

§ 1-40-107(2), C.R.S. (2019) 1

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 #301.

SUMMARY OF ARGUMENT

The title of Initiative #301 misleads the voters by including only a partial list of the key features of the measure and omitting the following: (1) the regulatory impact findings must include any direct or indirect impact to employment; (2) the regulatory impact findings must include the cumulative cost of each proposed rule; (3) the regulatory impact findings must identify if the proposed rule is capable of implementation by oil and gas operators; and (4) the regulatory impact findings must identify if the proposed rule requires the acquisition or use of any product, technology or equipment and that such product, technology or equipment is commercially available; and (5) the measure creates a two-step process whereby first the regulatory impact analysis must be published and interested parties will have the opportunity to comment on the analysis as though it were a proposed rule, and then there is the requirement that the final regulatory impact analysis be published at least 14 days prior to the public hearing. Only by listing these details would the title satisfy the clear title requirement.

Voters must be informed of these changes to the COGCC's rulemaking process in the title for #301 so that they do only sign petitions to put them on the ballot or vote to adopt them with sufficient and fair notice.

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. Here, the title for Initiative #301 is one for which the general understanding of the effect of a "yes" or "no" vote will be unclear.

Initiative #301 should be set aside because the title as set is misleading, therefore, the decision of the Title Board should be overturned.

ARGUMENT

1. 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 also

fail to state that this Court’s “role is to ensure 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 employed by the Title Board.” *Hayes v. Spalding (In re Title, Ballot Title and Submission Clause for 2015-2016 #73)*, 369 P.3d 565, 569 (Colo. 2016).

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

B. The Title and Submission Clauses Are Misleading.

In their Opening Briefs, both the Title Board and the Respondents argue that the Title Board accurately summarized the measure and that adding additional descriptions of the key features of the Initiative is unnecessary. *Title Board Open. Brf. p. 5; Respondents’ Open. Brf. pp. 7-10*. 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*, 369 P.3d at 570. Here, the title for Initiative #301 fails to alert voters as to how the measure will significantly alter present law.

The title of Initiative #301 misleads the voters by including only a partial list of the key features of the measure and omitting the following: (1) the regulatory impact findings must include any direct or indirect impact to employment; (2) the regulatory impact findings must include the cumulative cost of each proposed rule; (3) the regulatory impact findings must identify if the proposed rule is capable of implementation by oil and gas operators; and (4) the regulatory impact findings must identify if the proposed rule requires the acquisition or use of any product, technology or equipment and that such product, technology or equipment is commercially available; and (5) the measure creates a two-step process whereby first the regulatory impact analysis must be published and interested parties will have the opportunity to comment on the analysis as though it were a proposed rule, and then there is the requirement that the final regulatory impact analysis be published at least 14 days prior to the public hearing.

The effect of the omission from the title of these five key features of the Initiative is to render the title 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. Thus, while the title is not inconsistent with the Initiative, it is so general that voters will not understand the measure. *Id.*

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 #301 is one for which the general understanding of the effect of a "yes" or "no" vote will be unclear. *See generally* 1-40-106(3)(b); *see also In re Title, Submission Clause & Summary Pertaining to a Proposed Initiative on "Obscenity,"* 877 P.2d 848, 850-51 (Colo. 1994).

Even if the title substantially tracks the language found in the Initiative itself, "the source of a title's language does not rule out the possibility that the title could cause voter confusion." *Id.* at 851; *Robinson v. Dierking (In re Title, Ballot Title & Submission Clause for 2015-2016 #156)*, 413 P.3d 151, 153 (Colo. 2016); *see also In re Title, Ballot Title & Submission Clause & Summary for 1999-2000 #44*, 977 P.2d 856, 858 (Colo. 1999).

Voters must be informed of these changes to the COGCC's rulemaking process in the title for #301 so that they do only sign petitions to put them on the ballot or vote to adopt them with sufficient and fair notice.

CONCLUSION

The Petitioner respectfully requests that the Court overturn the actions of the Title Board with regard to Proposed Initiative 2019-2020 #301.

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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