

<p>COLORADO SUPREME COURT 2 East 14th 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 #301 (“Require Regulator Impact Analysis for Oil and Gas Conservation Committee Rules)</p> <p>Petitioner: Timothy Steven Howard,</p> <p>v.</p> <p>Respondents: Greg Brophy and Sam Bradley,</p> <p>and</p> <p>Title Board: Theresa Conley, David Powell, and Jason Gelender.</p>	<p>^ COURT USE ONLY ^</p>
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<p>THE TITLE BOARD’S ANSWER BRIEF</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 835 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

Petitioner alleges the title is misleading because it does not contain an exhaustive list of the items to be included in the regulatory impact findings. The measure would require the Colorado Oil and Gas Conservation Commission (“COGCC”) to publish impact findings which address eight different topics. Record, p. 3, proposed § 34-60-108.1(3)(a) through (3)(h).

Petitioner’s argument fails for two reasons. First, the title set by the Board, as amended on rehearing, addresses each of the items Petitioner has identified as missing from the title. Second, the clear title requirement does not require the Board to enumerate every element of the proposed initiative. 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 #301 should be affirmed.

ARGUMENT

I. The ballot title is not misleading.

A. Preservation

The Petition sets forth one issue presented, whether the ballot title for #301 is misleading in violation of Section 1-40-106(3)(b), C.R.S. (2019). The petition divides that issue into four subparts, alleging the following four items should be included in the title: (1) the regulatory impact findings must address direct and indirect impact on employment; (2) the regulatory impact findings must include cumulative costs of the rule; (3) the regulatory impact findings must address whether the proposed rule requires acquisition or use of any equipment, and whether that equipment is commercially available; and (4) the measure includes a two part process that allows for public comments.

Petitioner's Opening Brief adds a fifth issue: "the regulatory impact findings must identify if the proposed rule is capable of implementation by oil and gas operators." This issue is not addressed in

the Petition, but was preserved in Petitioner's Motion for Rehearing. Record, pp. 6-8.

B. The Board amended the title on rehearing to address three of the items Petitioner identifies as missing.

Petitioner argues that the title set by the Board is misleading because the title identifies key elements to be included in the impact findings, but does not list every element. Specifically, Petitioner in his Opening Brief identifies five elements (originally four in the Petition) which Petitioner alleges have been omitted.

Petitioner's Opening Brief fails to acknowledge that the Title Board amended the title on rehearing to add three of these items. The original title, as set by the Board stated as follows:

A change to the Colorado Revised Statutes requiring the oil and gas conservation commission, before adopting a rule, to publish regulatory impact findings that specify the authority and need for the rule and estimate certain impacts of the rule on the oil and gas industry, employment, state and local tax revenue, and oil and gas royalty payments.

Record, p. 5.

On rehearing, the Board added language to address three of the items Petitioner maintains are missing from the title: compliance costs; whether the rule can be implemented; and the opportunity for public comment:

A change to the Colorado Revised Statutes requiring the oil and gas conservation commission, before adopting a rule, to publish regulatory impact findings, after allowing public comment, that specify the authority and need for the rule and whether it can be implemented and estimate certain impacts of the rule on: the oil and gas industry, including compliance costs; employment; state and local tax revenue; and oil and gas royalty payments.

Record, p. 9.

The Board has already added three of the (now) five items he alleges are missing from the title. Petitioner's allegation that the title is misleading for allegedly omitting these items must fail.

C. Two remaining elements identified by Petitioner are also included in the title set by the Board.

The two remaining elements identified as missing by Petitioner are "direct or indirect impact to employment" and whether "the

proposed rule requires the acquisition or use of any product, technology or equipment and that such product, technology or equipment is commercially available.” Pet. Op. Br. p. 7. Petitioner again fails to acknowledge that these items are addressed in the title, which specifically references “employment,” “compliance costs” and “whether [the rule] can be implemented.” Record, p. 9. It may be the case that Petitioner believes that the title should contain more detail on these items. However, Petitioner’s Opening Brief does not explain why it believes these items are missing from the title.

D. The title set by the Board adequately summarizes the measure.

The title set by the Board is a reasonable distillation of a multi-page statutory provision. *In re Title, Ballot Title, & Submission Clause for 2009–2010 #45*, 234 P.3d 642, 648 (Colo. 2010). The Board need not include an exhaustive list of every element of the measure in the title—indeed an unduly lengthy title may be burdensome to voters. 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 #301.

Respectfully submitted this 29th day of May, 2020.

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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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