

<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>
<p>PHILIP J. WEISER, Attorney General ANNE MANGIARDI, Assistant Attorney General* Ralph L. Carr Colorado Judicial Center 1300 Broadway, 8th Floor Denver, CO 80203 Phone: (720) 508-6349 Fax: (720) 508-6041 Email: anne.mangiardi@coag.gov Registration Number: 44284 *Counsel of Record <i>Attorneys for the Title Board</i></p>	<p>Case No.: 2020SA156</p>
<p>THE TITLE BOARD’S OPENING 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 872 words.
- B. The brief complies with C.A.R. 28(a)(7) because for each issue it 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

ANNE M. MANGIARDI, 44284*

Assistant Attorney General

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

STATEMENT OF THE ISSUES

1. Whether the ballot title for Proposed Initiative 2019-2020 #301 (“#301”) is misleading in violation of Section 1-40-106(3)(b), C.R.S. (2019).

STATEMENT OF THE CASE AND FACTS

Proponents Greg Brophy and Sam Bradley seek to circulate #301 to obtain the requisite number of signatures to place a measure on the ballot to enact a new article, § 34-60-108.1, in Colorado’s revised statutes. The proposed initiative seeks to amend the process by which the Colorado Oil and Gas Conservation Commission (“COGCC”) enacts new rules. Record for Initiative #301, pp. 2-4, filed April 30, 2020 (“Record”). The initiative would require the COGCC to publish a “regulatory impact finding” for any future rulemaking by the COGCC. *Id.*, pp. 3-4.

The Board conducted an initial public hearing on April 15, 2020 and set a title for #301. Record, p. 5. Petitioner filed a timely motion for rehearing on April 22, 2020. *Id.*, pp. 6-8. After holding a rehearing on April 23, 2020, the Board granted that motion in part, to the extent of changes made to the title during the rehearing, and denied the motion in part. *Id.*, p. 9. Petitioner then filed a timely petition of review with this Court on April 30, 2020.

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 COGCC to publish impact findings which address eight different topics. Record, p. 3, proposed § 34-60-108.1(3)(a) through (3)(h). The Board is not required 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. Standard of Review and Preservation

A ballot initiative title must be fair, clear, accurate, and complete. *In re Title, Ballot Title & Submission Clause for 2007-2008 No. 62, 184 P.3d 52, 60 (Colo. 2008)*. The Board’s task is to set a fair and accurate title, not to ascertain the measure’s efficacy, construction, or future application. *In re Title, Ballot Title, & Submission Clause for 2009–2010 #45, 234 P.3d 642, 645 (Colo. 2010)*. This Court does not demand that the Board draft the best possible title. *Id.* at 648. The Court grants great deference to the Board in the exercise of its drafting authority. *Id.*

The 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)*. Title-setting is about distilling the proposed initiative down to a “reasonably ascertainable expression of the initiative’s purpose.” *In re #45, 234 P.3d at 648, citing In re Title, Ballot Title, and Submission Clause for 2009-10 #24, 218 P.3d 350, 356 (Colo. 2009)*.

Petitioner preserved this argument by raising it in his motion for rehearing, Record, pp. 6-8, and at the rehearing itself.¹

B. The ballot title accurately and plainly summarizes the initiative.

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.

The title set by the Board, as amended on rehearing, lists the following elements to be included in the regulatory impact findings: the authority for the rule (Record p. 3, proposed initiative § 34-60-108.1(3)(h)); whether the rule can be implemented (*id.*, subparagraph (3)(f)), an estimate of compliance costs (*id.*, subparagraph (3)(a)); impact on employment (*id.*, subparagraph (3)(b)); impact on tax revenue (*id.*, subparagraph (3)(c)); and impact on royalty payments (*id.*, subparagraph (3)(d)). Two of these elements (implementation capacity

¹ *Hearing Before Title Board on Proposed Initiatives 2019-2020 #300, #301* (April 23, 2020), available at <https://tinyurl.com/yctt99fp> (statement at timestamp 3:10:20-3:12:55).

and compliance costs) were added by the Board on rehearing, in response to Petitioner's objections. Record, pp. 5, 9. At Petitioner's urging, the Board also added language to specify that the public will be allowed to comment on the regulatory impact findings. *Id.*

Petitioner now alleges that four elements must be added to the title. The Board's amendments on rehearing have already addressed three of these elements (employment, implementation cost and public comment), though in a condensed form that does not include the full text of those elements from the proposed initiative. The fourth element identified by Petitioner is whether the proposed rule would require new technology.

The title set by the Board is a reasonable distillation of a multi-page statutory provision. *In re #45*, 234 P.3d at 648. The additions sought by Petitioner would transform the title from a summary of the proposed initiative into a voluminous recitation of each element of the measure. 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 15th day of May, 2020.

PHILIP J. WEISER
Attorney General

s/ Anne M. Mangiardi

ANNE M. MANGIARDI, 44284*

Assistant Attorney General
Attorney for the Title Board

* *Counsel of Record*

CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S OPENING BRIEF** upon the following parties or their counsel electronically via Colorado Courts E-Filing, at Arvada, Colorado, this 15th day of May, 2020, addressed as follows:

Eric Waeckerlin, Esq. Brownstein Hyatt Farber Schreck, LLP 410 17th Street, Suite 2200 Denver, Colorado 80202-4437 ewaeckerlin@bhfs.com <i>Counsel for Respondents Greg Brophy and Sam Bradley</i>	Martha M. Tierney Tierney Lawrence LLC 225 E 16th Ave., Suite 350 Denver, Colorado 80203 mtierney@tierneylawrence.com <i>Counsel for Petitioner Timothy Steven Howard</i>
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s/ Andrea DeHart

Andrea DeHart