

COLORADO SUPREME COURT 2 East 14th Avenue, Denver, Colorado 80203	
Original Proceeding Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board	
Petitioner: Timothy Steven Howard a/k/a Tim Howard v. Respondents/Proponents: Diane Schwenke and David Davia and Title Board: Theresa Conley, David Powell, and Jason Gelender	▲ COURT USE ONLY ▲
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Respondents' Answer Brief	

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with all requirements of Colorado Appellate Rules 28 and 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in Colorado Appellate Rule 28(g).

It contains 1,211 words (opening brief does not exceed 9,500 words).

The brief complies with the standard of review requirements set forth in Colorado Appellate Rule 28(a)(7)(A).

For each issue raised by Petitioner, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of Colorado Appellate Rules 28 and 32.

s/ Sarah M. Mercer

Sarah M. Mercer

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Respondents Diane Schwenke and David Davia, registered electors of the State of Colorado and the designated representatives of the proponents of Initiative 2019-2020 #313 (“Initiative #313”), through counsel respectfully submit their Answer Brief in support of the title, ballot title, and submission clause (the “Title”) set by the Title Board for Initiative #313 and in response to the Opening Brief submitted by Petitioner Tim Howard (“Petitioner”).

SUMMARY OF THE ARGUMENT

The Title Board was correct in its determination that Initiative #313 contains a single subject and drafted a clear title.

Initiative #313’s contingency that the oil and gas conservation commission or its successor cannot repeal or make less stringent certain air quality control commission rules related to oil and gas development, if otherwise given such authority, neither violates the single subject requirement nor does it render misleading the title set properly by the Title Board. Furthermore, the specificity demanded by Petitioner in the title is unnecessary because the title set by the Title Board is not

incomplete or misleading and accurately and properly reflects the intent of Initiative #313.

As such, the decision of the Title Board should be affirmed.

ARGUMENT

- I. **Initiative #313's contingency that the oil and gas conservation commission or its successor cannot repeal or make less stringent certain air quality control commission rules related to oil and gas development, if otherwise given such authority, neither violates the single subject requirement nor does it render misleading the title set properly by the Title Board.**

Petitioner contends the contingency in Initiative #313 prohibiting the oil and gas conservation commission or its successor from repealing or making less stringent certain air quality control commission rules creates an improper second subject. Pet. Op. Br. at p. 6. Petitioner also contends that this contingency renders the title set by the Title Board misleading. *Id.* at pp. 13-15. Petitioner is wrong on both counts.

All of the provisions of Initiative #313 are related to one general purpose: prohibiting the oil and gas conservation commission or its successor from repealing or making less stringent certain oil and gas

rules. See *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, 1080 (Colo.1995) (“[I]f the initiative tends to effect or to carry out one general object or purpose, it is a single subject under the law.”).

As Respondents have repeatedly stated, they intend Initiative #313 to be run in tandem with proposed 2019-2020 Initiative #311 (“Initiative #311”). If passed, Initiative #311 would give create a successor to the oil and gas conservation commission with veto power over air quality control commission rules related to oil and gas development. If given that authority, Initiative #313 would prohibit the successor to the oil and gas conservation commission from repealing or making less stringent certain air quality control commission rules.

This prohibition is not log rolled into Initiative #313, but rather is directly related to the Initiative #313’s one general purpose as the title makes clear. There is no prohibition on referencing a contingency in a title and, here, the title clearly and accurately does so.

Because all the provisions of Initiative #313—including the contingency—carry out one general purpose, the Title Board’s determination on single subject and language in the title should be affirmed. In addition, because the language of the title regarding the contingency serves to clarify—and not confuse—Initiative #313 for voters, the title set by the Title Board should be affirmed.

II. The title here need not include an effective date nor refer to other environmental and public safety rules to achieve a fair, clear, and accurate title for the voters.

Petitioner argues the Title Board’s failure to include an effective date in the title is a material and significant omission that will confuse voters. Pet. Op. Br. pp. 9-13. Petitioner also argues the title is confusing because it fails to refer to other environmental and public safety rules related to oil and gas development. *Id.* at pp. 15-17. Neither of these elements are necessary here to achieve a “fair, clear, and accurate title[] that do[es]not mislead the voters.” *In re Title, Ballot Title and Submission Clause, and Summary for 1999-00 #256*, 12 P.3d 246, 254 (Colo. 2000).

As explained above and in Respondents' Opening Brief, Initiative #313 seeks to create stability and certainty in the regulation of oil and gas development by establishing a regulatory floor for certain rules as they existed on January 1, 2020. As to those rules, and those rules alone, Initiative #313 prohibits the oil and gas conservation commission or its successor from repealing such rules or making them less stringent. Initiative #313 speaks only to the authority of this particular regulatory body over this specific set of rules as of this particular date, and does not in any way change what power the oil and gas conservation commission or its successor has over subsequent rules.

The title properly references "specified oil and gas conservation rules" and "if otherwise given such authority, specified air quality control commission rules." Use of the modifier "specified" before a noun is a common Title Board convention – and was deliberately chosen by the Title Board here – to point voters back to the language of the initiative and to keep the title streamlined and readable. During its deliberations, the Title Board correctly concluded that a lack of

reference to the January 1, 2020, date in the title would not confuse or mislead voters because the title point voters back to the text of this straightforward initiative. The title would not cause surprise regarding which regulations are included. The Title Board also correctly concluded that adding language regarding subsequent and current rulemaking was unnecessary and would be improper. *See In re Matter of Title, Ballot Title and Submission Clause for 2013–2014 #90*, 328 P.3d 155, 162 (Colo. 2014) (“[T]he Title Board is not required to explain the meaning or potential effects of the proposed initiative on the current statutory scheme.”).

Again, Initiative #313 is solely concerned with the authority of the oil and gas conservation commission or its successor over certain specified rules, and not with any other entities or any other rules. Contrary to Petitioner’s assertion, the oil and gas conservation commission or its successor has full control over its rules, including full control over the references to the standards embedded within its rules.

Adding the additional language that Petitioner requests in the title would only serve to confuse voters.

As this Court well knows, it does not demand that the Title Board draft the best possible title. *In re Title, Ballot Title and Submission Clause for 2009-10 #45*, 234 P.3d 642, 645, 648 (Colo. 2010). Rather, the Court reads the title as a whole to determine whether it properly reflects the intent of the initiative. *Id.* at 649 n.3. Initiative #313 is not a complicated or lengthy initiative, and the title set by the Title Board reflects that. Because the title is not incomplete or misleading and accurately and properly reflects the intent of Initiative #313, it should be affirmed.

CONCLUSION

Respondents respectfully request that the Court affirm the Title Board's actions in determining single subject and setting title for Initiative #313.

Dated: May 29, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2020, I electronically filed a true and correct copy of this **Respondents' Answer Brief** with the Clerk of Court via the Colorado Courts E-Filing System which will send notification of such filing upon counsel of record:

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