

<p>SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203</p>	<p>COURT USE ONLY</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. §1-40-107(2) Appeal from the Ballot Title Board</p>	
<p>Petitioner: TIMOTHY STEVEN HOWARD</p> <p>v.</p> <p>Respondents: DIANE SCHWENKE AND DAVID DAVIA</p> <p>Title Board: THERESA CONLEY, DAVID POWELL, and JASON GELENDER</p>	
<p><i>Attorneys for Petitioner:</i> Matt Samelson, Atty. Reg. #44085 Matt Sura, Atty. Reg. #44089 Western Environmental Law Partners 7354 Cardinal Lane Longmont, CO 80503 (720) 563-1866 matthewsamelson@gmail.com mattsura.law@gmail.com</p>	<p>Case No.</p>
<p align="center">PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2019-2020 #312</p>	

Timothy Steven Howard (“Petitioner”), a registered Colorado elector, through undersigned counsel, respectfully petitions the Court to review the title, ballot title, and submission clause set by the Ballot Title Setting Board (“Title

Board”) for Proposed Initiative 2019-2020 #312 (“Proposed Initiative”), pursuant to Colo. Rev. Stat. § 1-40-107(2).

I. STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2019-2020 #312

The Title Board conducted its initial public hearing and set the title for the Proposed Initiative on April 15, 2020. Petitioner filed his timely motion for rehearing on April 22, 2020. The Title Board considered the motion at its April 23, 2020 hearing and denied in its entirety.

B. Jurisdiction

Petitioner is entitled to a review before the Colorado Supreme Court pursuant to Colo. Rev. Stat. § 1-40-107(2). Additionally, petitioner timely filed his Motion for Rehearing with the Title Board. *See* Colo. Rev. Stat. § 1-40-107(1).

As required by Colo. Rev. Stat. § 1-40-107(2), attached to this Petition for Review are certified copies of the Proposed Initiative submitted to the Title Board; determination by the Title Board at its initial hearing on the Proposed Initiative on April 15, 2020; the Motion for Rehearing; determination by the Title Board to deny the Motion for Rehearing in its entirety on April 23, 2020; and the initial fiscal impact statement.

II. GROUNDS FOR APPEAL

Petitioner respectfully submits that the Proposed Initiative impermissibly contains more than a single subject in violation of Colo. Const. art. V, § 1(5.5) and Colo. Rev. Stat. § 1-40-106.5, and fails to comply with the clear title requirement of Colo. Rev. Stat. § 1-40-106(3)(b). The following is an advisory list of issues to be addressed in Petitioner's Opening Brief:

1. Whether the Title Board erred when setting a title for the Proposed Initiative because the measure violates the single subject requirement.

2. If the Title Board had jurisdiction to set title for the Proposed Initiative, the title violates legal requirements of the Title Board to inform voters of certain central elements of the Proposed Initiative including:

a. Multiple agencies actually could repeal certain rules in the Proposed Initiative's enumerated list of rules or make them less stringent;

b. Fails to convey that the recent Colorado Oil and Gas Conservation Commission ("COGCC") rulemaking promulgating stricter flowline rules could be repealed;

c. Fails to convey that the recent Air Quality Control Commission rulemaking promulgating stricter air emission standards and emission inventory rules could be repealed; and

d. Voter confusion as to whether or not the COGCC can amend or repeal air quality regulations.

III. PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties' briefs, the Court reverse the determination of the Title Board and return the Proposed Initiative to the Proponents on grounds that it contains more than one subject. In the alternative, Petitioner respectfully requests that the Court reverse the actions of the Title Board and remand the Proposed Initiative to the Title Board for redrafting consistent with the Petitioner's forthcoming opening brief regarding the clear title requirement.

Respectfully submitted this 30th day of April 2020.

Matthew Sura, Attorney at Law

By s/ Matthew Sura

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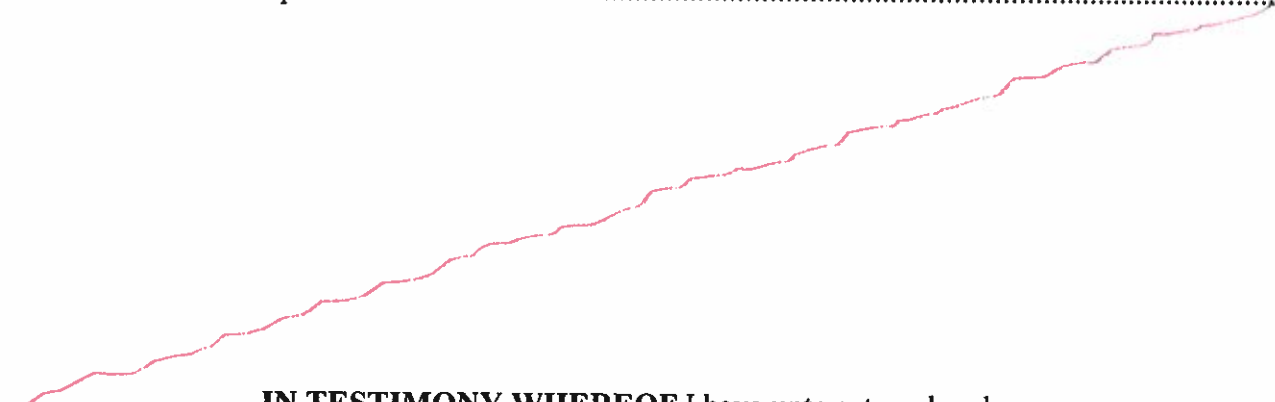
STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal impact statement and abstract, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2019-2020 #312 'Oil and Gas Development Rules'".....



..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 27th day of April, 2020.

Jena Griswold

SECRETARY OF STATE



Be it enacted by the People of the State of Colorado:

SECTION 1. In the constitution of the state of Colorado, **add** section 17 to article XVIII as follows:

Section 17. Oil and gas development rules. (1) THE FOLLOWING RULES AS THEY EXISTED ON JANUARY 1, 2020, SHALL NOT BE REPEALED OR AMENDED BY THE OIL AND GAS COMMISSION OR ITS SUCCESSOR TO MAKE THEM LESS STRINGENT:

- (a) OIL AND GAS CONSERVATION COMMISSION SAFETY RULES, 2 CCR 404-1, RULES 601 TO 610;
- (b) OIL AND GAS CONSERVATION COMMISSION AESTHETIC AND NOISE CONTROL RULES, 2 CCR 404-1, RULES 801 TO 805;
- (c) OIL AND GAS CONSERVATION COMMISSION SPILL REPORTING RULES, 2 CCR 404-1, RULES 901 TO 912;
- (d) OIL AND GAS CONSERVATION COMMISSION RECLAMATION RULES, 2 CCR 404-1, RULES 1001 TO 1004;
- (e) OIL AND GAS CONSERVATION COMMISSION FLOWLINE RULES, 2 CCR 404-1, RULES 1101 TO 1105;
- (f) AIR QUALITY CONTROL COMMISSION AIR EMISSION REDUCTION RULES, 5 CCR 1001-9, REG. NO. 7, PART D § II.C; AND
- (g) AIR QUALITY CONTROL COMMISSION AIR EMISSION INVENTORY RULES, 5 CCR 1001-9, REG. NO. 7, PART D § V.

SECTION 2. Effective date.

This act takes effect upon the proclamation of the Governor.

Ballot Title Setting Board

Proposed Initiative 2019-2020 #312¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution prohibiting the oil and gas conservation commission from repealing or amending to make less stringent: 1) specified oil and gas conservation commission rules related to oil and gas safety, aesthetic and noise control, spills, reclamation, and flowlines, and, 2) if otherwise given such authority, specified air quality control commission rules related to air emission reductions and inventory.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution prohibiting the oil and gas conservation commission from repealing or amending to make less stringent: 1) specified oil and gas conservation commission rules related to oil and gas safety, aesthetic and noise control, spills, reclamation, and flowlines, and, 2) if otherwise given such authority, specified air quality control commission rules related to air emission reductions and inventory?

Hearing April 15, 2020:

Single subject approved; staff draft amended; titles set.

The Board determined that the proposed initiative adds language to the state constitution. The requirement for approval by fifty-five percent of the votes cast applies to this initiative.

Hearing adjourned 6:55 p.m.

¹ Unofficially captioned “_” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

RECEIVED

By Steven Ward at 1:26 pm, Apr 22, 2020

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE BALLOT TITLE AND SUBMISSION CLAUSE FOR
INITIATIVE 2019-2020 #312

MOTION FOR REHEARING

Tim Howard (“objector”), a registered elector of the State of Colorado, through undersigned counsel, hereby submits this Motion for Rehearing of Initiative 2019-2020 #312 pursuant to Section 1-40-107(I)(a)(I) C.R.S. As grounds therefore objector states the following:

The Proposed Initiative 2019-2020 #312 states:

Shall there be an amendment to the Colorado constitution prohibiting the oil and gas conservation commission from repealing or amending to make less stringent: 1) specified oil and gas conservation commission rules related to oil and gas safety, aesthetic and noise control, spills, reclamation, and flowlines, and, 2) if otherwise given such authority, specified air quality control commission rules related to air emission reductions and inventory?

I. The Board lacks jurisdiction over Initiative #312 because it contains more than one separate and distinct subject in violation of the Constitution’s single subject requirement.

The Colorado Oil and Gas Conservation Commission (“COGCC”) does not have regulatory authority to approve or disapprove rules promulgated by the Colorado Air Quality Control Commission (“AQCC”). Furthermore, the proposed initiative does not give the COGCC such powers. The COGCC and AQCC are separate commissions residing within different departments of the executive branch. The proposed initiative creates a second subject by amending the Colorado Constitution in an effort to grant regulatory authority to the COGCC that it does not have in a manner that is beyond the scope of the Colorado Administrative Procedures Act (“APA”).

The Colorado APA only grants the General Assembly, the legislative branch, the legal authority to determine if a new or amended rule complies with statutes via the annual rule review bill, and the Governor, executive branch, has the power to veto the annual rule review bill. C.R.S. § 24-4-103 (8)(c) & (d). The Colorado APA process for adopting rules does not contemplate another agency also having the ability to approve or disapprove the same rule.

The proposed initiative expressly states that specific AQCC rules “shall not be repealed or amended by the oil and gas commission or its successor to make them less stringent.” The COGCC lacks that power, but by stating that a commission will not do something it does not have the authority to do, it has created a second subject in conflict with the APA.

The AQCC and COGCC are separate unique commissions within different departments because they were created with unique missions and duties.

The AQCC's legislative declaration, in part, states:

[I]t is declared to be the policy of this state to achieve the maximum practical degree of air purity in every portion of the state, to attain and maintain the national ambient air quality standards, and to prevent the significant deterioration of air quality in those portions of the state where the air quality is better than the national ambient air quality standards.

C.R.S. § 25-7-102(1)

The legislative declaration further declares: "Climate change adversely affects Colorado's economy, air quality and public health, ecosystems, natural resources, and quality of life," C.R.S. § 25-7-102(2)(a), and, "Colorado shall strive to increase renewable energy generation and eliminate statewide greenhouse gas pollution by the middle of the twenty-first century." C.R.S. § 25-7-102(2)(g).

Duties of the AQCC include promulgating rules consistent with the legislative declaration sent forth in C.R.S. § 25-7-102 and necessary for the proper implementation and administration of this article 7. C.R.S. § 25-7-105(1).

While the AQCC appropriately focuses on air quality standards and eliminating greenhouse gas pollution, the COGCC is directed to "regulate the development and production of the natural resources of oil and gas in the state of Colorado in a manner that protects public health, safety, and welfare, including protection of the environment and wildlife resources." C.R.S. § 34-60-102(1)(a)(I).

The COGCC and AQCC are separate commissions with separate missions, duties, and rulemaking authority. Because the proposed initiative attempts to give regulatory powers to the COGCC that are beyond the scope of the Colorado APA, there is a second subject.

II. Even if the Title Board has jurisdiction, the Ballot Title and Submission Clause is incomplete and misleading.

A. Certain rules can be repealed or made less stringent even though the proposed initiative implies they cannot

Although the proposed initiative states the "Oil and Gas Commission" is prohibited from repealing or making less stringent certain environmental and public safety rules, at least 11 entities could repeal certain rules or make them less stringent.

Numerous organizations can repeal certain rules in the proposed initiative or make them less stringent because many of the COGCC rules referenced in the proposed initiative require compliance with statutes, rules, and national codes and standards beyond the control of the COGCC. The entities are the United States Congress, Occupational Safety and Health

Administration, Bureau of Land Management, Colorado General Assembly, Colorado Water Quality Control Commission, Colorado AQCC, Colorado Geological Survey, Colorado Division of Reclamation, Mining, and Safety, Colorado Hazardous Materials and Waste Management Division, National Fire Protection Association Code, and the American Petroleum Institute.

The COGCC would be prohibited from such actions, but entities such as the American Petroleum Institute, a national oil and gas trade association would have the ability to repeal certain rules or make them less stringent. Colorado voters would be surprised to learn that the COGCC is ceding power to a national oil and gas lobbyist association and ten other entities. It is inaccurate and misleading to state that certain environmental and public safety rules cannot be repealed or made less stringent. All entities with the ability to repeal certain rules or make them less stringent should be included in the ballot title.

B. Fails to convey that the recent COGCC flowline rulemaking could be repealed or amended

The proposed initiative would allow the recent COGCC flowline rulemaking to be repealed or amended. However, it is unclear when reading the proposed initiative or ballot title that the flowline rulemaking could be repealed or amended because that information is coiled in the folds of a complex initiative.

Because the ballot title fails to state that only rules effective as of January 1, 2020 are protected, a voter may think the recent flowline rules cannot be repealed or amended. But the recently promulgated COGCC flowline rules, referred to as “Oil and Gas Conservation Commission flowline rules, 2 CCR 404-1, Rules 1101-1105” in the initiative went into effect on January 14, 2020.

Furthermore, even if the ballot title included language about the January 1, 2020 effective date, because the flowline rulemaking occurred in 2019, it may cause confusion unless it expressly stated that the flowline rules could be repealed or amended. The rules were noticed on October 8, 2019 and promulgated on November 21, 2019. The rules were printed in the Colorado Register, Vol. 42, No. 24, on December 25, 2019. But per C.R.S. § 24-4-103, the rules do not become effective until twenty days after publication in the Colorado Register.

In response to the Firestone tragedy in 2017, where two people were killed when their home exploded due to an unmapped and improperly abandoned natural gas flowline, the COGCC enacted three fundamental changes to the agency’s flowline and inactive well rules: (1) requiring mapping data for flowlines and a publicly available online map of the flowlines; (2) enabling inspections when an operator wanted to reactivate an inactive flowline or well; and (3) requiring third-party verification for flowlines abandoned underground.

Colorado voters would be surprised to learn that the proposed initiative, which purports to regulate oil and gas operators, would allow recently implemented rules to protect Coloradans from abandoned flowlines to be repealed or amended.

The ballot title needs to list the effective date provision and all of the flowline rules that could still be repealed or amended.

C. The ballot title insufficiently informs voters that the proposed initiative contemplates repealing or amending recent air emission rules.

Although the COGCC does not have the authority to repeal AQCC rules, the proposed initiative contemplates allowing recent air emission rules to be repealed or amended. The ballot title suffers from the same lack of clarity discussed in the previous section.

The AQCC air emission standards and inventory rules, referred to as 5 CCR 1001-9, Reg. No. 7, Part D § II.C and § V in the initiative, went into effect on February 14, 2020. Therefore, they are not protected from being repealed or amended. But the ballot title reads as if they are protected.

The new air quality regulations that apply to the oil and gas industry were unanimously adopted by the AQCC. These regulations require: semi-annual leak detection and repair for low-producing wells statewide; stronger tank controls for low-producing wells; statewide expansion of the “find and fix” program for malfunctioning controllers and valves known as “pneumatic” devices; a performance-based standard to reduce emissions across the transmission segment of the oil and gas supply chain; more frequent leak detection and repair within 1,000 feet of homes, schools and other public areas; and a requirement that operators calculate and report all pollution, including methane emissions, to the state on an annual basis. These critical AQCC air emission rules went into effect on February 14, 2020 and therefore are not deemed by the initiative to comply with the proposed mission of the new board to balance public health safety, welfare, and the environment with oil and gas development.

The ballot title needs to list the effective date provision and all of the air emission standards and emission inventory rules that could still be repealed or amended.

D. The Title Board added clarifying language to the ballot title that is not reflected in the proposed initiative.

Unlike the ballot title, the proposed initiative has no caveat in the language stating “if otherwise given such authority.” This language was grafted on to the ballot title in an attempt to rectify the missing language from the proposed initiative because the COGCC has no legal authority to repeal or amend AQCC rules. While we commend the Title Board’s attention to detail, voters will be surprised to learn that that the new language in our state constitution provides no such limitation.

III. Conclusion

Accordingly, the objector respectfully requests that this Motion for Rehearing be granted and a hearing set pursuant to C.R.S. § 1-40-107(1).

Respectfully submitted this 22nd day of April, 2020.

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Attorneys for objector Tim Howard

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION FOR REHEARING was served electronically, this 22nd day of April, 2020, to the following proponents' representatives:

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Matt Sura, Atty. Reg. #44089

Ballot Title Setting Board

Proposed Initiative 2019-2020 #312¹

The title as designated and fixed by the Board is as follows:

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Hearing April 15, 2020:

Single subject approved; staff draft amended; titles set.

The Board determined that the proposed initiative adds language to the state constitution. The requirement for approval by fifty-five percent of the votes cast applies to this initiative.

Hearing adjourned 6:55 p.m.

Rehearing April 23, 2020:

Motion for Rehearing denied in its entirety.

Hearing adjourned 7:28 p.m.

¹ Unofficially captioned “_” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

INITIAL FISCAL IMPACT STATEMENT

Date: April 14, 2020

Fiscal Analyst: Max Nardo (303-866-4776)

LCS TITLE: OIL AND GAS DEVELOPMENT RULES

***Disclaimer.** This initial fiscal impact statement has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff may revise this estimate for the ballot information booklet (Blue Book) if new information becomes available.*

Summary of Measure

The measure amends the Colorado Constitution to prevent certain rules of the Colorado Oil and Gas Conservation Commission (COGCC) and of the Air Quality Control Commission (AQCC) from being repealed or amended to be less stringent. These rules include:

- COGCC safety rules;
- COGCC aesthetic and noise control rules;
- COGCC spill reporting rules;
- COGCC reclamation rules;
- COGCC flowline rules;
- AQCC air emission reduction rules; and
- AQCC air emission inventory rules.

State Revenue and Expenditures

There are no direct costs or revenue impacts associated with implementing this measure. However, the existence of these constraints in the Colorado Constitution could cause fiscal impacts to result from future actions by the federal government, state legislature, or regulatory entities. For example, the federal Environmental Protection Agency may require Colorado to remove certain air monitoring methodologies from rule in order to maintain compliance with future federal standards. If this measure is construed as preventing the removal of the rule, the state could incur sanctions.

Economic Impact

Prohibiting changes to certain rules regulating oil and gas does not have a direct impact on the state economy.

Effective Date

If approved by voters at the 2020 general election, this measure takes effect upon proclamation of the Governor, no later than 30 days after the official canvass of the vote is completed.

State and Local Government Contacts

Public Health and Environment
Information Technology
Judicial

Natural Resources
Counties
Law

Local Affairs
Municipalities

Abstract of Initiative 312: OIL AND GAS DEVELOPMENT RULES

The abstract includes estimates of the fiscal impact of the proposed initiative. If this initiative is to be placed on the ballot, Legislative Council Staff will prepare new estimates as part of a fiscal impact statement, which includes an abstract of that information. All fiscal impact statements are available at www.ColoradoBlueBook.com and the abstract will be included in the ballot information booklet that is prepared for the initiative.

This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of April 14, 2020, identifies the following impacts:

State revenue and expenditures. There are no direct costs or revenue impacts associated with implementing this measure. There may be indirect state fiscal impacts associated with permanently constraining regulatory rules in the constitution. These impacts cannot be assessed.

Economic impact. The measure has no direct impact on the state economy.