

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED: April 7, 2020 6:52 PM</p>
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2018) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2019- 2020 #178 (“Oil and Gas Operator Financial Assurance”)</p> <p><b>Petitioner:</b> John Justman,</p> <p>v.</p> <p><b>Respondents:</b> Anne Lee Foster and Suzanne Spiegel,</p> <p><b>and</b></p> <p><b>Title Board:</b> Theresa Conley, David Powell, and Jason Gelender.</p>	<p><b>^ COURT USE ONLY ^</b></p> <p>Case No. 2020SA67</p>
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<p><b>THE TITLE BOARD'S ANSWER BRIEF</b></p>	

## 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, I certify that:

The brief complies with the word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 649 words.

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

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 C.A.R. 28 or 28.1, and C.A.R. 32.

*s/ Emily Buckley*

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## ARGUMENT

### **I. The Court should affirm the title set by the Board.**

The Court should affirm the decisions of the Title Board, for the reasons stated in the Title Board's opening brief and in Proponents' opening brief. The Title Board rests on the arguments made in its opening brief that the initiative has a single subject, that the title is not misleading, and that the Board correctly denied the motion for rehearing as to the abstract. The Board files this answer brief to further address Petitioner's argument that the Board improperly handled the motion to disqualify.

#### **A. The Board appropriately dealt with the motion to disqualify.**

The Court should decline Petitioner's invitation to broaden the statutory bases for review of the Title Board's decisions. Contrary to the authority cited by Petitioner, the Board is not "designed either to further the adjudication of legal rights and duties or to implement a rulemaking function." *In re Title, Ballot Title & Submission Clause for 2019-2020 #74*, 2020 CO 5, ¶ 22 (quotations omitted). Instead, the

Board's enabling statutes "create a specific process and distinctive procedures applicable only to the unique functions of the Board." *Id.* (quotations omitted).

Petitioner cites cases concerning disqualification of judges in the judicial and quasi-judicial context. But the Board is not a court, or "an administrative agency functioning in an adjudicative capacity." *In re Proposed Amend. Entitled "W.A.T.E.R."*, 831 P.2d 1301, 1306 (Colo. 1992). The Administrative Procedure Act does not even apply to the Board. *See id.* The cases cited by Petitioner do not apply to the posture of the Title Board.

Even if a motion to disqualify may be permitted in some circumstances before the Board, this is not such a circumstance. The only basis of alleged bias identified by Petitioner is prior statements by Ms. Conley before she held her present position. This Court has rejected that such statements demonstrate a biased decision maker, even in a judicial or quasi-judicial capacity. In *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, the Court rejected a claim that a commissioner on the Public Utilities Commission should be disqualified based on prior

statements he made as a commissioner. 763 P.2d 1020, 1028 (Col. 1988). The Court recognized that “there is a presumption of integrity, honesty, and impartiality in favor of those serving in quasi-judicial capacities.” *Id.* Accordingly, “in the absence of a personal, financial, or official stake in the decision evidencing a conflict of interest on the part of a decision maker,” the decisionmaker will be found to have acted impartially. *Id.* Contrary to Petitioner’s claim that his due process rights have been violated, a “decision maker is not disqualified on due process grounds simply for having taken a position, even in public, on a policy issue related to the dispute, if there is no showing that the decision maker is incapable of judging the particular controversy fairly on the basis of its own circumstances.” *Id.* Here, Petitioner presented no evidence that past statements of a Board member actually affected the decisions of the Board.

Finally, Petitioner contends that he was denied the opportunity to present evidence of bias at the hearing. Petitioner does not identify for the Court what that evidence is, or whether it differs in any way from the materials cited in his motion to disqualify. And, to the extent

Petitioner argues that judicial standards of recusal and disqualification apply to this non-judicial Board, Petitioner's failure to make an offer of proof as to what this excluded evidence would have shown is fatal. *See, e.g., Vu v. Fouts*, 924 P.2d 1129, 1131 (Colo. App. 1996) ("To preserve for review an objection to the exclusion of evidence, a party must make a proper offer of proof which demonstrates the relevance and admissibility of the evidence.").

### CONCLUSION

The Court should affirm the decisions of the Title Board.

Respectfully submitted on this 7<sup>th</sup> day of April, 2020.

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*/s/Emily Buckley*

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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 CCEF, at Denver, Colorado, this 7th day of April, 2020, addressed as follows:

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