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SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	
Original Proceeding Pursuant to Colo. Rev. Stat. §1-40-107(2) Appeal from the Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2019-2020, #175 **Petitioner:** JOHN JUSTMAN **v.** **Respondents/Proponents:** ANNE LEE FOSTER and SUZANNE SPIEGEL **and** **Ballot Title Board:** THERESA CONLY, DAVID POWELL, and JASON GELENDER	**▲ COURT USE ONLY ▲** Supreme Court Case No. 20SA70
Attorneys for Petitioner: Suzanne Staiert, Reg. No. 23411 MAVEN LAW GROUP 1800 Glenarm Place, Suite 950 Denver, CO 80202 Phone: (303) 263-0844 Email: sstaiert@mavenlawgroup.com	

PETITIONER'S OPENING BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all the requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

Choose one:

_X_ It contains 4,766 words.

___ It does not exceed 30 pages.

The brief complies with C.A.R. 28(k).

For the party raising the issue:

_X_ It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) citation to the precise location in the record, not to an entire document, where the issue was raised and ruled on.

For the party responding to the issue:

____ It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

/s/ Suzanne Staiert
Suzanne Staiert
Attorney for the Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Constitutional Provisions

Petitioner, John Justman, registered elector of the State of Colorado, through his undersigned counsel, submits his Opening Brief in this original proceeding challenging the actions of the Title Board on Proposed Initiatives 2019-2020 Nos. 173 - 177 (each unofficially captioned as "Setback Requirements for Oil and Gas Development").

STATEMENT OF THE ISSUES PRESENTED

1. Whether the Title Board properly considered the Petitioner's Motion to Disqualify.
2. Whether the Title Board erred in ruling that the measures contain a single subject as required by Article V, § 1(8) of the Colorado Constitution and C.R.S. §1-40-105(4).
3. Whether the measures' fiscal impact statement and abstract fail to comply with the requirements of C.R.S. § 1-40-105.5(3), and are otherwise misleading and prejudicial.
4. Whether the titles describing "homeowner waiver" are misleading.

STATEMENT OF THE CASE

The Petitioner brings this original proceeding pursuant to section 1-40-107(2), C.R.S., as an appeal of the Title Board's decision to deny Petitioner's Motion for Rehearing and set title for Proposed Initiatives 2019-2020 Nos. 173-

177. The Petitioner also appeals the Title Board's improper consideration of the Motion to Disqualify.

Proposed Initiatives Nos. 173-177 are substantially similar in language and seek to increase the statewide minimum distance requirement for new oil and gas production to 2,000 or 2,500 feet from "occupied structures" and "vulnerable areas." Proposed Initiatives Nos. 175 and 177 also provide for a "homeowner waiver." Proponents Anne Lee Foster and Suzanne Spiegel filed an original draft of each measure on January 24, 2020. The Proponents filed an amended draft of the Initiative with the Title Board on January 24, 2020.

The Title Board considered the Initiative on February 5, 2020 and determined that it possessed jurisdiction to set title. *See* Pet. For Review, at 8 (No. 173), 9 (No. 174), 10 (No. 175), 9 (No. 176), and 10 (No. 177). The Petitioner subsequently filed timely Motions for Rehearing ("Motions") pursuant to section 1-40-107(1)(a) and a Motion to Disqualify on February 12, 2020.

In the Motions concerning Proposed Initiatives Nos.173, 174 and 176, Petitioner argued that:

1. The measures violated the single-subject requirement; and
2. The measures' fiscal impact statement and abstract failed to comply with the requirements set forth in Section 1-40-105.5, C.R.S. by providing voters

with no meaningful information, and are otherwise misleading and prejudicial.

In the Motions concerning Proposed Initiatives Nos. 175 and 177, Petitioner argued that:

1. The measures violated the single-subject requirement;
2. The measures' fiscal impact statement and abstract failed to comply with the requirements set forth in Section 1-40-105.5 by providing voters with no meaningful information, and are misleading and prejudicial; and
3. The measures' titles are misleading.

At the February 19, 2020 Rehearing, the Secretary of State's designee and chairperson of the Title Board, first dispensed with the Motion to Disqualify filed in Proposed Initiatives Nos. 173 - 177. Without deliberation or a vote of the Title Board, the Chairperson, who was the subject of the Motion to Disqualify, concluded the Motion had no basis in statute or rule, was "procedurally improper," and therefore "fails." Audio of the February 19, 2020 Rehearing, at 05:47. The Chairperson opined that only judicial or quasi-judicial boards are required to consider allegations of bias. *Id*. at 05:09 – 05:20. The Director of the Office of Legislative Legal Services' designee opined that because Proposed Initiative 2017-

2018 No. 97 had successfully withstood challenge, the Title Board could not be biased. *Id*. at 06:04 – 06:53.[1]

Next, the Title Board received testimony and considered the five Motions for Rehearing. Petitioner offered testimony from Mr. Chad Calvert, Manager, Government Relations, Noble Energy. Mr. Calvert testified on the percentage of lands which would be off-limits to oil and gas development if the setbacks were in place, demonstrating that the true intent of the Proposed Initiatives was to shutter all oil and gas development in Colorado. *Id*. at 10:05 – 10:50. Mr. Calvert provided the Title Board with a map. Mr. Calvert also provided testimony that because the percentage of lands which would be off-limits to oil and gas development would be known, a reasonable forecast of fiscal impacts would be known. *Id*. at 14:58 – 15:26. Mr. Calvert also referenced a 2018 study titled "Increasing the Oil and Gas Setback Requirement to 2,500-feet in Colorado: An

[1] It is important to note that the proceedings involving Proposed Initiative 2017-2018 No. 97 occurred before the unprecedented changes in the regulatory landscape of oil and gas development as result of Senate Bill 2019-181. The Governor signed SB 19-181 into law on April 16, 2019. SB 19-181 "ensures that oil and gas development and operations in Colorado are regulated in a manner that protects public health, safety, welfare, the environment and wildlife resources." Changes to regulations include local government authority and siting. *See* "SB 19-181" at https://cogcc.state.co.us/sb19181.html#/overview. Central to these measures, SB 19-181 allows local governments to fix setbacks more stringent than the state's setback requirements.

Economic and Fiscal Impact Analysis."[2] *Id*. at 15:27 – 15:39. The study relied upon dynamic modeling, but consideration of the study was rejected by the Legislative Council. *Id*. at 15:38 – 15:39. The Title Board denied all five Motions for Rehearing. *Id*. at 24:43 – 24:57 (No. 173), 26:13 – 26:26 (No. 174), 43:40 – 43:58 (No. 175), 45:09 – 45:28 (No. 176), and 46:19 – 46:43 (No. 177).

Petitioner subsequently filed a petition for review in this Court on February 26, 2020. This Court granted the request to consolidate briefing in Case Nos. 20SA72, 20SA71, 20SA70, 20SA69, and 20SA68. (Order of the Court, Feb. 28, 2020).

SUMMARY OF ARGUMENT

The Title Board's Rehearing on Proposed Initiatives Nos. 173 – 177 must be called into question because of the Title Board's failure to properly consider the Petitioner's Motion to Disqualify. The Petitioner is legitimately entitled to a fair and unbiased decision maker, and even one biased member on the Title Board is sufficient to deprive the Petitioner of procedural due process. The General

[2] The economic impact analysis was authored by Chris Brown, the director of policy and research for the Common Sense Policy Roundtable, and research analyst Zhao Chang for the REMI Partnership. Their findings were reviewed by Ian Lange and Braeton Smith with the Colorado School of Mines Mineral and Energy Economics Program.

Assembly has made clear that state agencies are required by statute to ensure that all proceedings are not substantially prejudiced and decision makers are free of conflicts of interest.

Furthermore, the Title Board should not have set titles for Proposed Initiatives Nos. 173 – 177. The measures violate the single-subject and clear title requirements, and the measures' fiscal impact statements and abstracts fail to comply with the statutory requirements in Section 1-40-105.5(3), C.R.S., by not providing any estimates despite available information.

More specifically, the measures violate the single-subject requirement because they contain additional subjects beyond the measure's central feature – a 2,000 foot or 2,500 foot setback on oil and gas production. *See* Proposed Initiatives, §3 (setback). These additional subjects include the shuttering of new oil and gas development and providing that the greater setback in a geographic area trumps any others adopted by overlapping jurisdictions, stripping away the ability of home-rule municipalities to govern themselves. *See id.* at §4.

Perhaps most importantly, the measures' fiscal impact statements and abstracts are utterly absent of fiscal estimates required in statute. The abstract contains these omissions despite the availability of a 2018 study titled "Increasing the Oil and Gas Setback Requirement to 2,500-feet in Colorado: An Economic and

Fiscal Impact Analysis." Such omission, which would have explained that the measure would significantly impair new oil and gas production and reduce jobs and Colorado's Gross Domestic Product ("GDP"), would cause the fiscal impact statements and abstracts to mislead voters. The Title Board refused to amend the abstract and fiscal impact statement.

Also, the Title Board impermissibly relied upon previous Title Board decisions on similar measures, such as Proposed Initiative No. 97 as precedent. While the Proposed Initiatives Nos. 173, 174, and 176 are similar to Proposed Initiative 2017-2018 No. 97 which was upheld by this Court, today's statutory framework is remarkably different than when the Court considered Proposed Initiative No. 97. (*See* footnote 1). Specifically, Senate Bill 2019-181, effective April 19, 2019, made significant changes to state and local government authority in the regulation of oil and gas development. The measures' titles, fiscal impact statements, and abstracts fail to inform voters of the potential impacts the proposed initiatives have on these new authorities and with the on-going rulemaking activities of the Colorado Oil and Gas Conservation Commission on wellbore integrity, mission change, flowlines, cumulative impacts, and alternative location analysis.

Therefore, for all the reasons stated above and explained further below, the actions of the Title Board in denying the Motions must be reversed.

STANDARD OF REVIEW

The Court has the authority to review not only the Title Board's single-subject and clear-title findings but also a measure's fiscal impact statement and abstract. *In the Matter of the Title, Ballot Title and Submission Clause for 2017-2018 No. 4*, 395 P.3d 318, 323 (Colo. 2017). When reviewing a challenge to the Title Board's decision on single subject, clear title, fiscal impact statement and abstract, this Court "employ[s] all legitimate presumptions in favor of the propriety of the Title Board's action." *In the Matter of Title, Ballot Title, and Submission Clause for 2013-2014 No. 89*, 328 P.3d 172, 176 (Colo. 2014); *In the Matter of the Title, Ballot Title and Submission Clause for 2017-2018,* 395 P.3d at 323. Although the right of initiative is to be liberally construed, "[i]t merits emphasis that the proponents of an initiative bear the ultimate responsibility for formulating a clear and understandable proposal for the voters to consider." *In re Title, Ballot Title, and Submission Clause for 2007-2008 No. 62*, 184 P.3d 52, 57 (Colo. 2008) (citation omitted).

Petitioner believes that this is the first time this Court has been asked to address whether Petitioner has a legitimate expectation to an impartial Title Board.

It is self-evident that a fair tribunal is a basic requirement of due process. *See Caperton v. Massey Coal*, 556 U.S. 868, 876 (2009) (citation omitted). Recusal is required when the probability of actual bias on the part of the decisionmaker is "too high to be constitutionally tolerable." *Id*. at 877 (citation omitted).

Petitioner is provided a limited and narrowly-construed procedural opportunity for Title Board rehearing and this Court's review separate from the rights granted the proponent. *Montero v. Meyer*, 13 F.3d 1444, 1449 (10th Cir. 1994). This Court presumes the validity of the Title Board's decision, *See In re Proposed Initiative Concerning Drinking Age in Colorado*, 691 P.2d 1127, 1130 (Colo. 1984).

While Petitioner's rights are narrow under the Title Board statute, Petitioner still has a legitimate expectation of fairness and impartiality. The Petitioner should be able to present his case with assurance that the arbiter is not predisposed to find against him. *McClure v. Independent School Dist. No. 16*, 228 F.3d 1205, 1215 (10th Cir. 2000) citing *Marshall v. Jerrico, Inc.,* 446 U.S. 238, 242 (1980) (citations and internal quotations omitted).

LEGAL ARGUMENT

I. THE TITLE BOARD IMPROPERLY CONSIDERED PETITIONER'S MOTION TO DISQUALIFY, CALLING INTO QUESTION THE IMPARTIALITY OF THE ENTIRETY OF THE TITLE BOARD'S REHEARING PROCEEDINGS

The Title Board failed to properly consider the Petitioner's timely Motion to Disqualify and therefore the entirety of the Title Board's Rehearing on Proposed Initiatives Nos. 173 – 177 must be called into question. "[O]ur system of law has always endeavored to prevent even the probability of unfairness." *Withrow v. Larkin*, 421 U.S. 35, 47 (1975) (citation omitted). Fair and unbiased decision makers are required not only in the judicial context. *Id*.

The Petitioner is entitled to a fair and unbiased decision maker, and even one biased member on the Title Board is sufficient to deprive the Petitioner of procedural due process. *See Caperton*, 556 U.S. at 876; *McClure*, 228 F.3d at 1216. Colorado's General Assembly has also made clear that state agencies are required by statute to ensure that proceedings are not substantially prejudiced and the decision maker is free of conflicts of interest. *See* C.R.S. § 24-3.7-102(d) "Best Practices for State Boards and Commissions" (requiring written policies or bylaws and annual training on identifying and managing conflicts of interest).

The Due Process Clause entitles a person to an impartial and disinterested tribunal. U.S. Const. amend. XIV§1. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affective individuals in the decision-making process. *Marshall*, 446 U.S. at 242.

Petitioner should be able to present his case with assurance that the arbiter is not predisposed to find against him. *McClure*, 228 F.3d at 1215 citing *Marshall,* 446 U.S. at 242 (citations and internal quotations omitted).

At the Rehearing, the Petitioner was prepared to offer evidence of bias but was not provided the opportunity.[3] This included the anti-oil and gas industry nature of the Chairperson's previous employment, her role as a former lobbyist, and her anti-oil and gas communications during and after her previous employment . *See* Motion to Disqualify, at 1. While there is a presumption of honesty and integrity owed to the Title Board, the Petitioner must be provided with the opportunity to overcome this presumption and demonstrate that actual bias and prejudgment was

[3] Petitioner is also concerned that since the Rehearing, the Secretary of State's designee, the subject of the Motion to Disqualify, has attempted to hide or destroy evidence which supports the alleged bias by removing from the public view anti-oil and gas industry social media posts.

present. And in this instance, the Title Board's failure to fully consider the Motion to Disqualify interferes with this legitimate expectation. Failing to fully consider the Motion sets a precedent which would foreclose on any question of bias, including whether a member of the Title Board could be a proponent of a ballot measure. It is an unconscionable conclusion which demands review. Petitioner asks that the Court remand the measures back to the Title Board for full consideration of Petitioner's Motion to Disqualify.

II. PROPOSED INITIATIVES 2019-2020 NOS. 173-177 CONTAIN MULTIPLE SUBJECTS IN VIOLATION OF THE SINGLE-SUBJECT REQUIREMENT

Although the Proponents contend that the single subject of their measures are a statewide minimum distance requirement for new oil and gas production, the measures contain multiple additional subjects. These impermissible separate subjects for Proposed Initiative Nos. 173 - 77 include:

(a) stripping local government authority granted in SB 19-181 to regulate oil and gas operations in a reasonable manner in no less than seven areas: land use, location and siting, impacts to public facilities and services; water quality and source, noise, vibration, odor, light, dust, emissions and air quality, land disturbance, reclamation procedures, cultural resources, emergency preparedness and coordination with first responders, security,

and traffic and transportation impacts; financial securities, indemnification, and insurance as appropriate to ensure compliance with the regulations of local government; all other nuisance-type effects of oil and gas development; and regulate the use of land and protection of the environment. See C.R.S. 29-20-104.

(b) The initiatives' setback requirement is effectively a ban on new and gas development;

(c) The initiatives' setback requirement is a taking of property;

(d) The initiatives alter the powers of local governments to control land use within its borders;

(e) The initiatives remove the state's power to permit an efficient rate of production, subject to the protection of public health, safety, and welfare, the environment and wildlife resources;

(f) The initiatives repeal local ordinances that have been enacted in response to SB 19-181; and

(g) The initiatives repeal administrative rules that have been passed by the state in response to SB 19-181.

In addition to the seven impermissible separate subjects enumerated above, Proposed Initiatives Nos. 175 & 177 also include repeals of current rules related to setback waivers.

A. The Single-Subject Requirement Protects Against Two Specific Dangers

Article V, § 1(5.5) of the Colorado Constitution requires that "[n]o measure shall be proposed by petition containing more than one subject…" No title can be set and submitted to the people for adoption or rejection at the polls if a measure contains more than one subject, and has at least two distinct and separate purposes not dependent upon or connected with each other. *People ex rel. Elder v. Sours*, 74 P. 167, 177 (1903); Colo. Const. art. V, § 1(5.5); *see also* § 1-40-106.5 (statutory single-subject requirement).

The single subject requirement guards against two dangers associated with omnibus initiatives. First, combining subjects with no necessary or proper connection for the purpose of garnering support for the initiative from various factions – that may have different or even conflicting interests – could lead to the enactment of measures that would fail on their own merits. *In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-02 No. 43*, 46 P.3d 438, 442 (Colo. 2002). Second, the single subject requirement helps avoid "voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision 'coiled

up in the folds' of a complex initiative." *Id. see also In re Title, Ballot Title and Submission Clause for Proposed Initiative for 2011-12 No. 3*, 274 P.3d 562, 566 (Colo. 2012).

B. Proposed Initiatives Nos. 173-177 Contain Multiple Subjects Separate from the Measures' Setback Requirement

The measures, which are all captioned "Setback Requirements for Oil and Gas Development," include either a 2,000-foot[4] or 2,500-foot[5] setback from "occupied structures"[6] and "vulnerable areas."[7] In addition, Proposed Initiatives Nos. 175 and 177 include a "waiver" of the setback requirement for a homeowner's principal residence only if it is a single family dwelling.

[4] Proposed Initiatives Nos. 176 and 177 provide for 2,000 foot setbacks.
[5] Proposed Initiatives Nos. 173, 174, and 175 provide for 2,500 foot setbacks.
[6] Proposed Initiatives Nos. 173 – 177 define "occupied structure" as any building or structure that requires a certificate of occupancy or building or structure intended for human occupancy, including homes, schools, and hospitals.
[7] Proposed Initiatives No. 173, defines "vulnerable areas" as playgrounds, permanent sports fields, amphitheaters, public parks, public open space, public and community drinking water sources, irrigation canals, reservoirs, lakes, rivers, perennial or intermittent streams, and creeks, and any additional vulnerable areas designated by the state or a local government. Proposed Initiatives Nos. 174 – 177 define "vulnerable areas" as playgrounds, permanent sports fields, amphitheaters, public parks, public open space, public and community drinking water sources, irrigation canals, reservoirs, lakes, rivers, creeks, Superfund sites as designated by the United States Environmental Protection Agency, and soil that is known to be contaminated with toxic pollutants, hazardous waste, or radioactive material.

The setback requirement is the subject most likely to garner voters' sole attention as it affirmatively creates a defined legal requirement. The purpose of the setback requirement is clear: to curtail almost all oil and gas development in the state, whether drilling of new wells or reentry of existing wells. *See* Audio of Feb. 19, 2020 Rehearing at 14:58 – 15:39. When Petitioner discussed the purpose of the setback requirement, Proponents failed to make clear otherwise. *See id.* at 23:55 – 24:31.

The measure contains other multiple subjects separate from the setback requirement, enumerated above. These multiple subjects include taking of property, altering the powers of local governments to control land use within their borders, and the repeal of local ordinances and administrative ordinances enacted in response to SB19-181.

Other subjects are "coiled up in the folds" of the measure. Because the measures gives counties the power to set larger setbacks, and these greater restrictions govern even if they conflict with a home rule city's lesser restriction, the measures override home rule municipalities' ability to govern themselves free from state and county restrictions. For example, a county could decide that it wants a setback that has the effect of prohibiting new oil and gas development within the entire county, and the home rule cities within the county have no ability

to override those restrictions, as they otherwise would under current law. This is a separate and distinct subject that bears no necessary and proper connection to the existing setback regulation.

C. Both Dangers of Omnibus Measures are Present with Proposed Initiatives Nos. 173-177

The additional subjects described above and contained within the Petitioner's Motion for Rehearing implicate the very "dangers" the single-subject requirement is designed to prevent. First, they are "coiled up in the folds" of the measure. A voter who supports the measures because he or she supports increased setbacks may be unaware that the measures result in the shuttering of almost all oil and gas development. And, a voter who supports the measure because he or she supports increased setbacks may be unaware that the measures additionally remove control away from home rule municipalities. These subjects are buried in the measures, are not explicitly stated, or both. Second, the measures could garner support from different and competing factions and thus cause the measures to pass on their own even though their multiple subjects might not have been able to pass separately. There is no reason to presume that voters who may support the 2,000-foot or 2,500 foot setback would additionally vote for a scheme where home rule municipalities lose their land use authority provided in SB 19-181, or to repeal local ordinances and administrative rules promulgated under SB 19-181. In other words, the

measure could gain support from the anti-fracking groups along the Front Range who want local control over fracking, anti-local control groups who desire a uniform statewide setback of 2,000-foot or 2,500-foot setback, and pro-oil and gas development groups on the eastern plains and West Slope who do not mind the setbacks because they have less effect in rural areas but favor local control. Such measures, which can pass only by combining subjects that appeal to different factions, violate the single-subject requirement. *See In re 2011-2012 No. 3*, 274 P.3d at 566.

III. PROPOSED INITIATIVES NOS. 173-177's FISCAL IMPACT STATEMENTS AND ABSTRACTS FAIL TO COMPLY WITH THE REQUIREMENTS OF SECTION 1-40-105.5 BY PROVIDING VOTERS WITH NO MEANINGFUL INFORMATION, AND ARE MISLEADING AND PREJUDICAL

The General Assembly provided for a robust fiscal impact statement and a meaningful abstract to be included in the initiative process. This reflected the General Assembly's intent to provide voters with fiscal impact information earlier in the initiative process so that voters have the same fiscal information available during the initiative process that legislators have in the Bluebook for legislative bills. This requirement requires a full abstract be included on every page of the petition, rather than a two-sentence summary of the abstract as originally proposed.

See Audio of Hearing on H.R. 1057 Before H. Comm. on Veterans Affairs, 1st Regular Sess., 70th Gen. Assembly (Colo. March 25, 2015) at 58:40 – 59:35.

Notwithstanding the clear intent behind the abstract requirement, the Legislative Council's analysis in the abstract of the fiscal and economic impacts of the measures provides no meaningful discussion on the percentage of lands which would be eliminated by the setbacks, the reduction in jobs, and the implication to Colorado's GDP. Legislative Council had access to two studies which informed Coloradans on the impacts of increased setbacks. First, Mr. Calvert offered testimony on a 2018 study titled "Increasing the Oil and Gas Setback Requirement to 2,500-feet in Colorado: An Economic and Fiscal Impact Analysis." Second, two years ago, information was provided to the Legislative Council by the Respondents to Initiative 2017-2018 No. 97. Even so, the abstracts only included vague references.

The 2018 study and readily available information before the Legislative Council clearly defines the fiscal and economic impacts, including the loss of an average of 104,000 jobs annually over the next 15 years, GDP declines of an average of $14 billion, and an average of $8.3 billion in real income losses by Coloradans.

The abstracts and Financial Impact Statements fail to comply with the requirements set forth in Section 1-40-105.5, C.R.S. because they provides voters with no meaningful information on the measures' fiscal impact, and are misleading and prejudicial.

A. The Abstracts are legally inadequate because they do not contain an estimate and fail to comply with the requirements of Section 1-40-105.5(3).

Section 1-40-105.5(3), C.R.S. outlines the requirements of the abstract which must be provided by the Legislative Council of the General Assembly. The abstract must include "[a]n estimate of the effect the measure will have on state and local government revenues, expenditures, taxes, and fiscal liabilities if the measure is enacted." *Id*. at 105.5(3)(a).

The abstracts fail to provide any estimates, merely stating that severance tax, royalty payments, and lease revenue that state and local government will collect in the future "is expected to decrease." Pet. For Review, at 15 (No. 173), 16 (No. 174), 17 (No. 175), 16 (No. 176) and 17 (No. 17). This is not an estimate. Also, the abstract states that "'[l]ower oil and gas production will constrain regional economic activity by reducing industry employment and profits, and reducing rent and royalty income to mineral owners." *Id*. The abstract is silent on impacts on demand for associated services. This is also not an estimate.

Therefore, the Title Board should have modified the abstracts to include estimates provided in the 2018 study or other studies readily available to the Legislative Council. Lastly, the abstracts also failed to include a statement of the measures' economic benefits for all Coloradans, simply stating that "larger setbacks will preserve property values for homeowners." *Id*.

This Court has affirmed the Title Board's approval of an abstract where Legislative Council testified that it could not provide quantitative estimates. *See In the Matter of the Title, Ballot Title and Submission Clause for 2017-2018 No.4*, 395 P.3d at 324. Here, the Legislative Council has been provided with not one but two studies which provide quantitative estimates. Absent quantitative estimates, the Title Board erred in determining it had jurisdiction to set title for the measures.

B. The Abstracts are misleading and prejudicial.

As discussed above, the abstracts do not include actual estimates and instead provide vague generalities which fail to fully inform voters. The abstracts fail to express the magnitude in GDP decline and job losses if the setbacks are put in place. The vague generalities serve to mitigate the measures' actual effects. And voters are left with nothing meaningful before deciding whether to sign a petition. As a result, the abstract is incomplete and misleading.

Because the abstract is misleading and prejudicial under Section 1-40-107(1)(a)(II)(B), C.R.S., the Title Board's decision to set title must either be set aside for lack of jurisdiction or remanded back to the Title Board to allow the correction of deficiencies.

IV. THE TITLES OF PROPOSED INITIATIVES NOS. 175 AND 177 DESCRIBING THE "HOMEOWNER WAIVER" ARE MISLEADING

Proposed Initiatives Nos. 173 – 177 all contain a setback requirement. Proposed Initiatives Nos. 175 and 177 allow homeowners to "waive this [setback] requirement for their principal residence only if it is a single-family dwelling." *See* Section (3), Proposed Initiatives Nos. 175 and 177.

The Title Board must consider the public confusion that might be caused by misleading titles and reject initiatives that cannot be understood clearly enough to allow the setting of a clear title. C.R.S. §1-40-106(3)(a); *In re Proposed Initiative 1999-2000 No. 25*, 974 P.2d 458 (Colo. 1999).

The manner in which Proposed Initiatives Nos. 175 and 177 are drafted reflect a bias against multi-generational families which will create confusion for some Coloradans. Some multi-generational families reside in one dwelling and other multi-generational families may live in multiple dwellings on one property not owned by all family members. These types of primary residence situations are

not reflected in the titles, and operation of this provision may not serve as an actual waiver for these families and others. As currently written, the title violates the clear title requirement.

CONCLUSION

Petitioner respectfully requests the Court determine that the Title Board's finding on the Petitioner's Motion to Disqualify violated Petitioner's due process rights, any title setting determinations made by the Title Board are void, and remand the Motion to Disqualify for a full and fair hearing on the merits of the Motion.

In the alternative, Petitioner respectfully requests this Court reverse the Title Board's setting of Title for Proposed Initiatives Nos. 173 – 177, return the Proposed Initiatives to the Proponents, and hold that:

1. The measures violate the single-subject requirement, and thus the measures should return to the Proponents because the Title Board lacked the authority to set title;
2. The measures' financial impact statements and abstracts do not comply with section 1-40-105.5(3), and are misleading and prejudicial, and thus must be returned to Legislative Council for redrafting and reconsideration by the Title Board;

3. The titles for Proposed Initiatives Nos. 175 and 177 are misleading and thus violate the clear title requirement.

Respectfully submitted this 18th day of March 2020.

MAVEN LAW GROUP

/s/ Suzanne Staiert
Suzanne Staiert
Attorney for the Petitioner

CERTIFICATE OF SERVICE/MAILING

I hereby certify that on 18th day of March, 2020 a true and correct copy of the **PETITIONER'S OPENING BRIEF** was served via the State of Colorado's ICCES File and Serve e-filing system, email and United States mail, postage prepaid, properly addressed to the following:

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Duly signed original on file at Maven Law Group