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SUPREME COURT, STATE OF COLORADO **2 East 14th Avenue** **Denver, Colorado 80203**	
Original Proceeding Pursuant to Colo. Rev. Stat. §1-40-107(2) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2019-2020 #175 **Petitioners:** JOHN JUSTMAN v. **Respondents:** ANNE LEE FOSTER AND SUZANNE SPIEGEL and **Title Board:** THERESA CONLEY; DAVID POWELL; and JASON GELENDER	▲COURT USE ONLY▲
Attorneys for Respondents Martha M. Tierney, No. 27521 Tierney Lawrence LLC 225 E.16TH AVE, SUITE 350 Denver, CO 80203 Phone: (720) 242-7577 E-mail: mtierney@tierneylawrence.com	Case No.: 2020SA70

RESPONDENTS' OPENING BRIEF

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, the undersigned certifies that the brief complies with C.A.R. 28(g). It contains 4953 words.

Further, the undersigned certifies that the brief complies with C.A.R. 28(k).

For the party raising the issue:

☐It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R.__, p.__), 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.AR. 32.

By: s/Martha M. Tierney

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Anne Lee Foster and Suzanne Spiegel (jointly "Proponents" or "Respondents"), registered electors of the State of Colorado, through their undersigned counsel, respectfully submit this Opening Brief in support of the title, ballot title and submission clause (jointly, the "Titles") that the Title Board set for Proposed Initiatives 2019-2020 #173, #174, #175, #176 and #177 (collectively, the "Initiatives").

STATEMENT OF ISSUES PRESENTED FOR REVIEW[1]

1. Whether the Title Board erred in ruling that the measures contain a single subject as required by Article V, §1(5.5) of the Colorado Constitution and C.R.S. §1-40-105(4).
2. Whether the titles set by the Title Board for the measures are unfair and misleading.
3. Whether the measures' fiscal impact statement and abstract are misleading and prejudicial.
4. Whether the Title Board's ruling on the Petitioner's Motion to Disqualify violated Petitioner's due process rights.

[1] These issues are drawn, as best Respondents are able, from Petitioner's "Issues Presented for Review" in his Petition for Review and from the positions asserted by Petitioner in his Motions for Rehearing.

STATEMENT OF THE CASE

This is an appeal from the Title Board's setting of the Title for Initiatives #173, #174, #175, #176 and #177. On January 7, 2020, Proponents filed the Initiatives with the directors of the Legislative Council and the Office of Legislative Legal Services. Pursuant to C.R.S. §1-40-105(2), the Offices of Legislative Council and Legislative Legal Services conducted a review and comment hearing on each of the Initiatives as required by C.R.S. §1-40-105(1) on January 21, 2020.

Proponents filed the Initiatives with the Secretary of State's office on January 24, 2020. At the Title Board hearing on February 5, 2020, the Title Board found that each of the Initiatives contained a single subject, as required pursuant to article V, section 1(5.5) of the Colorado Constitution, and C.R.S. §1-40-106.5. The Title Board set the Title for each of the Initiatives.

On February 12, 2020, Petitioner John Justman filed a Motion for Rehearing on each of the Initiatives and Motion to Disqualify the Chair of the Title Board, Theresa Conley, from serving on the Title Board to hear each of the Initiatives. On February 19, 2020, the Title Board denied the Motion to Disqualify and denied each Motion for Rehearing in its entirety. Petitioner John Justman filed a Petition

for Review for each of the Initiatives, pursuant to C.R.S. §1-40-107(2) on February 26, 2020.

STATEMENT OF FACTS

The Titles set for the Initiatives by the Title Board correctly and fairly expresses the true intent and meaning of the Initiatives and will not mislead the public. The Titles follow the Initiatives' structure, using similar, and often identical, language.

Initiative #173 amends the Colorado Revised Statutes to create a statewide setback requirement for new oil and gas development of at least 2,500 feet from the nearest occupied structure or vulnerable area, defines terms used in the measure, allows local governments to increase the setback distance, and sets forth implementation details concerning enactment and enforcement. Notably, the text and title for Initiative #173 are identical to the text and title for Initiative 2017-2018 #97, which was previously reviewed, and the Title Board's title affirmed, by this Court. Order dated April 6, 2018, Case No. 2018SA31.[2]

The Title set for Initiative #173 at the hearing on February 5, 2020 reads:

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[2] Each of the Initiatives is also similar (but not identical) to the text and titles for 2013-2014 proposed initiatives #85, #86 and #87, which were reviewed and titles affirmed by this Court in *Cordero v. Leahy (In re Title, Ballot Title, and Submission Clause for 2013-2014 #85)*, 328 P.3d 136 (Colo. 2014).

> A change to the Colorado Revised Statutes concerning a statewide minimum distance requirement for new oil and gas development, and, in connection therewith, changing existing distance requirements to require that any new oil and gas development be located at least 2,500 feet from any structure intended for human occupancy and any other area designated by the measure, the state, or a local government and authorizing the state or a local government to increase the minimum distance requirement.

Initiative #174 differs from Initiative #173 only by changing the definition of "vulnerable areas" to remove "perennial or intermittent streams and creeks," and "and any additional vulnerable areas designated by the state or a local government" and add "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." Initiative #176 differs from Initiative #174 only in the distance of the setback requirement – Initiative #174 has a distance of 2,500 feet and Initiative #176 has a distance of 2,000 feet.

The Title set for Initiatives #174 and #176 at the hearing on February 5, 2020 reads:

> A change to the Colorado Revised Statutes concerning a statewide minimum distance requirement for new oil and gas development, and, in connection therewith, changing existing distance requirements to require that any new oil and gas development be located at least 2,500 [2,000 in #176] feet from any structure intended for human occupancy and any other area designated by the measure and authorizing the state or a local government or a local government to increase the minimum distance requirement.

Initiative #175 differs from Initiative #174 only by adding an allowance for a waiver by a homeowner for the owner's single-family principal residence. Initiative #177 differs from Initiative #176 in the same way – by adding an allowance for a waiver by a homeowner for the owner's single-family principal residence. The Titles, as set for Initiatives #175 and #177 at the hearing on February 5, 2020, read:

> A change to the Colorado Revised Statutes concerning a statewide minimum distance requirement for new oil and gas development, and, in connection therewith, changing existing distance requirements to require that any new oil and gas development be located at least 2,500 [2,000 in #177] feet from any structure intended for human occupancy and any other area designated by the measure, authorizing the state, or a local government or a local government to increase the minimum distance requirement; and allowing a homeowner to waive the minimum distance requirement for the owner's single-family principal residence.

The fiscal abstract for each of the Initiatives is identical, except for the reference to the size of the setback – 2,500 feet in #173, #174, and #175; and 2,000 feet in #176 and #177. The abstract is clear and meets the requirements of the law. The fiscal abstract for the Initiatives reads:

> State and Local Government Revenue and Expenditures. The measure is expected to decrease the amount of severance tax, royalty payments, and lease revenue that state and local government collects in the future, and the amount of state and local expenditures of that revenue.

> Economic Impacts. The measure constrains oil and gas well location throughout the state by increasing the current 500 foot setback to a 2,500 [2,000 in #176 and #177] feet setback. This will prohibit oil and gas development on about 450 acres surrounding a given point, instead of 18 acres under current law. As a result, future oil and gas development will be prohibited on significant portions of land in the Raton basin in south-central Colorado and the Denver-Julesberg basin in central and northern Colorado, and by lesser amounts in western Colorado. Since proximity to a well has been shown to reduce home values, larger setbacks will help preserve property values for homeowners. Lower oil and gas production will constrain regional economic activity by reducing industry employment and profits, and reducing rent and royalty income to mineral owners.

SUMMARY OF ARGUMENT

The Title Board properly exercised its broad discretion in determining the single subject of the Initiatives, drafting the titles and accepting the fiscal abstract. Each of the Initiatives contains a single subject by creating a statewide requirement for new oil and gas development of at least 2,500 feet [2,000 feet in #176 and #177] from the nearest occupied structure or vulnerable area. Initiatives #175 and #177 also allow a homeowner to waive the distance requirement for the homeowner's single-family principal residence. The remaining provisions, including the definition of terms used in the measures, and an allowance for the state or a local government to increase the setback distance, all flow from the measure's single subject.

The Initiatives do not present either of the dangers attending omnibus measures. The proponents did not combine an array of disconnected subjects into the measure for the purpose of garnering support from various factions; and voters will not be surprised by, or fraudulently led to vote for, any surreptitious provisions coiled up in the folds of a complex initiative. Petitioner's concerns about the effects that the Initiatives could have on other laws, or their application if enacted are not appropriate for review at this stage.

The fiscal abstracts comply with Colorado law and are neither prejudicial nor misleading. The Title Board properly deferred to Legislative Council's judgment in the absence of a compelling reason that the abstracts were inaccurate.

The Titles satisfy Colorado law because they fairly and accurately set forth the major features of the Initiatives and are not misleading. The Titles make clear that the measures authorize state and local governments to create minimum distance requirements in excess of 2,500 feet [2,000 feet in #176 and #177] for new oil and gas development from structures intended for human occupancy and any other area designated by the measure. For #175 and #177, the titles also clearly set forth the ability of a homeowner to waiver the distance requirement for the homeowner's single-family principal residence.

Petitioner should be barred from arguing clear title on Initiatives #173, #174, and #176 because he did not raise these issues before the Title Board.

The Title Board is only obligated to fairly summarize the central points of a proposed measure, and, need not refer to every nuance and feature of the proposed measure. While a title must be fair, clear, accurate and complete, it is not required to set out every detail of an initiative.

There is no basis to set aside the Titles, and the decisions of the Title Board should be affirmed.

ARGUMENT

I. The Initiatives Comply with the Single Subject Requirement.

A. Standard of Review.

Article V, section 1(5.5) of the Colorado Constitution, and C.R.S. §1-40-106.5(1)(a), provide that a proposed initiative must be limited to "a single subject which shall be clearly expressed in its title." "A proposed initiative violates this rule if its text relates to more than one subject and has at least two distinct and separate purposes not dependent upon or connected with each other." *In re Initiative for 2011-2012 #3,* 274 P.3d 562, 565 (Colo. 2012). When reviewing a challenge to the Title Board's decision, this Court "employ[s] all legitimate presumptions in favor of the propriety of the Title Board's action." *Cordero v.*

Leahy (In re Initiative for 2013-2014 #90), 328 P.3d 155, 158 (Colo. 2014). The Court will "only overturn the Title Board's finding that an initiative contains a single subject in a clear case." *Id.*

B. Initiatives 2019-2020 #173, #174, #175, #176, and #177 Contain a Single Subject.

Each of the Initiatives contains a single subject: establishing a statewide minimum distance requirement for new oil and gas development from occupied structures and vulnerable areas. The remainder of each measure contains a legislative declaration, definitions of terms used in the measure, a provision allowing the state or a local government to increase the minimum distance requirement, and in #176 and #177 only, an allowance for a homeowner waiver- all congruous and related to the single subject of the measure. The text of the Initiatives is short, and their provisions are directly tied to each measure's central focus.

The single-subject requirement functions to prevent two dangers: (1) "logrolling," or the practice of "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—[in order to] lead to the enactment of measures that would fail on their own merits"; and (2) voter surprise and fraud caused by the "passage of a surreptitious provision 'coiled up in

the folds' of a complex initiative." *In re Initiative for 2011-2012 #3*, 274 P.3d at 566; *see also* § 1-40-106.5(1)(e), C.R.S. The subject matter of a proposed initiative "must be necessarily and properly connected rather than disconnected or incongruous." *In re Initiative for 2013-2014 #90*, 328 P.3d at 159 (quoting *In re Initiative for 2011-2012 #3*, 274 P.3d at 565). But where a proposed initiative "tends to effect or to carry out one general objective or purpose," it presents only one subject. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-00 #256*, 12 P.3d 246, 253 (Colo. 2000); *accord In re Initiative for 2013-2014 #90*, 328 P.3d at 159.

Additionally, an initiative does not violate the single-subject requirement simply because it contains provisions necessary to effectuate its purpose. *See In re Initiative for 2013-2014 #90*, 328 P.3d at 159. Rather, so long as they are interrelated, such provisions "are properly included within [the initiative's] text." *Id.*; *see also Earnest v. Gorman (In re Title, Ballot Title and Submission Clause for 2009-2010 # 45*), 234 P.3d 642, 646 (Colo. 2010) ("An initiative may contain several purposes, but they must be interrelated . . . . Implementing provisions that are directly tied to the initiative's central focus are not separate subjects." (Citation omitted)). In reviewing the Title Board's actions, this Court construes the single-

subject requirement liberally to avoid unduly restricting the initiative process. *In re Initiative for 2013-2014 #90*, 328 P.3d at 160.

Here, Petitioner contends that the Initiatives violate the single subject requirement but does not specify these violations in his Petitions. In his Motions for Rehearing, Petitioner argued that each Initiative violated the single subject requirement because in addition to establishing a 2,500 foot [2,000 foot in #176 and #177] setback requirement for new oil and gas development from occupied structures and vulnerable areas, the measures also (1) take away local government authority granted in Senate Bill 19-181 to regulate oil and gas operations in a reasonable manner; (2) are an effective ban on new and gas [sic] development; (3) constitute a taking of property; (3) alter the relationship of local governments to control land use within their borders; (4) remove the state's power to permit an efficient rate of production; (5) repeal local ordinances that have been enacted in response to SB 19-181; (6) repeal administrative rules that have been enacted in response to SB 19-181; and (7) repeal current rules related to setback waivers.

Petitioner overstates the breadth of the Initiatives. They do not broadly alter existing laws and rules, change constitutional home rule or taking provisions, or eliminate the preemption doctrine; rather, the initiative affects those constitutional, statutory and administrative provisions and doctrines only inasmuch as they

directly relate to the subject matter of the initiative—establishing a minimum distance requirement of 2,500 [2,000 for #176 and #177] feet for new oil and gas development from occupied structures and vulnerable areas. As this Court has repeatedly held, "[t]he effects this measure could have on Colorado . . . law if adopted by voters are irrelevant to [a] review of whether [the proposed initiative] and its Titles contain a single subject." *In re Initiative for 2013-2014 #90,* 328 P.3d at 160 (*quoting In re Initiative for 2011-2012 #3*, 274 P.3d at 568 n.2).

Specifically, this Court has previously made clear that any effect a proposed initiative would have on Colorado's constitutional home rule provisions does not constitute a separate subject. "The alteration of the existing power and authority of home rule and statutory cities to enact certain regulations pertaining to the central purpose of the initiative does not violate the single subject requirement." *In re Initiative for 2013-2014 #90,* 328 P.3d at 161; *In re Initiative for 1999-00 #256*, 12 P.3d at 254 (holding that the curtailment of home rule powers over development is a necessary result of the measure's central purpose to manage development, and thus is not a separate subject).

This Court also looked at the issue of whether a change in preemption law creates a separate subject in the context of a similar measure in 2014, and found that it did not. In that case, this Court held,

> any effect the [initiatives] would have on Colorado's preemption doctrine does not constitute a separate subject. Indeed, the central purpose of the initiatives is to grant local governments the authority to enact <u>more restrictive</u> regulations on oil and gas development within their respective jurisdictions. Thus, that the [initiatives] declare that more restrictive regulations enacted under the initiatives would govern over conflicting state laws is necessarily and properly connected to the initiatives' central purpose.

In re Initiative for 2013-2014 #90, 328 P.3d at 161. Like the 2014 and 2018 measures, the Initiatives alter the existing power and authority of state and local governments to enact certain regulations pertaining to the central purpose of the initiative –establishing a minimum distance requirement of 2,500 [2,000 for #176 and #177] feet for new oil and gas development from occupied structures and vulnerable areas – and this does not violate the single subject requirement. *See id.*

"In determining whether a proposed measure contains more than one subject, [the Court] may not interpret its language or predict its application if it is adopted." *In re Initiative for 1999-2000 #255*, 4 P.3d 485, 495 (Colo. 2000). Rather, the Court applies the general rules of statutory construction and accords the language of the measure its plain meaning. *See In re Initiative for 2005-2006 #75*, 138 P.3d 267, 271 (Colo. 2006).

The Initiatives do not present either of the dangers the single-subject requirement seeks to prevent. There is no threat of logrolling here because the proponents did not combine an array of unconnected subjects into the measure for

the purpose of garnering support from groups with different, or even conflicting interests. *In re Initiative for 2013-2014 #89,* 328 P.3d 172, 177 (Colo. 2014). Rather, each subsection of the Initiatives is tied to the central purpose of the measures: creation of a statewide minimum distance requirement of at least 2500 [2,000 for #176 and #177] feet from occupied structures and vulnerable areas. The Initiatives will pass or fail on their merits and do not run the risk of garnering support from factions with different or conflicting goals. *See id.* at 178.

The Initiatives also fail to trigger the second danger of omnibus measures because voters will not be surprised by, or fraudulently led to vote for, any provisions "coiled up in the folds" of the Initiatives. *In re Initiative 2001-2002 #43,* 46 P.3d 438, 442-43 (Colo. 2002). No such surprise would occur should voters approve any one of the Initiatives, because the plain language of the measures unambiguously proposes creating a statewide minimum distance requirement of 2,500 [2,000 for #176 and #177] feet from occupied structures and vulnerable areas, defines terms included in the measure, allows local governments to increase the size of the setback, and in #175 and #177 only, adds an allowance for a waiver by a homeowner for the owner's single-family principal residence.

The Initiatives are not overly lengthy or complex, and their plain language is not confusing. *See In re Initiative for 2011-2012 #3,* 274 P.3d at 567.

Petitioner contends that the Initiatives contain a separate subject because they effectively "ban [] new oil and gas development, *Motion for Rehearing, p. 2, ¶B.I(b).* The crux of Petitioner's argument is really that the Initiatives are a bad idea. However, in determining whether a proposed initiative comports with the single subject requirement, this Court "does not address the merits of the proposed initiative or predict how it may be applied if adopted by the electorate." *In re Title, Ballot Title & Submission Clause for 2007-2008 #62*, 184 P.3d 52, 58 (Colo. 2008). Whether a proposed initiative is a bad idea is not the test of whether it meets the single subject requirement.

The Initiatives comply with the single subject rule.

II. <u>The Initiatives' Abstract Is a Correct Estimate, Is Not Misleading or Prejudicial, and Meets the Requirments of Colorado Law</u>.

A. <u>Standard of Review</u>.

This Court has the authority to review an abstract prepared and submitted to the Title Board pursuant to C.R.S. §1-40-105.5. *Smith v. Hayes (In re Title, Ballot Title & Submission Clause for 2017-2018 #4),* 395 P.2d 318 (Colo. 2017). The Court determined that it "should use the same standard to review an abstract as is it does to review a title." *Id.* at 323. The Court employs "all legitimate presumptions in favor of the propriety" of the Title Board's decisions and only overturns the Board's decision "in a clear case." *Id., citations omitted*. The Court applies the

same deferential standard in reviewing challenges to abstracts as it does in reviewing challenges to other Title Board decisions. *Id.*

B. <u>The Abstract Satisfies the Statutory Requirements and Is Not Misleading or Prejudicial</u>.

Here, Petitioner contends that the Initiatives' abstract fail to comply with the requirements of §1-40-105.5 and is misleading and prejudicial but does not specify these violations in his Petitions.

At the Rehearing on February 19, 2020, Petitioner argued that, because the abstract does not include any hard numbers or other quantitative data, it was misleading and failed to satisfy the requirements for abstracts set forth in section 1-40-105.5(3). Petitioner, through a representative from Noble Energy, sought inclusion in the abstract of quantitative economic impact data from a 2018 study that discussed impacts on oil and gas development from an increase to the setback distance. Declining to modify the abstract, the Title Board noted that the abstract contains qualitative data based on currently available information, including the economic impacts of the Initiatives. *See* Audio of the February 19, 2020 Rehearing, ("Rehearing Audio"), at 21:30–22:50.[3] Additionally, the Title Board

[3] The audio of Title Board's February 19, 2020 rehearing can be found at https://csos.granicus.com/MediaPlayer.php?view_id=1&clip_id=149

reasoned that since the 2018 study predated many changes that came about in the wake of SB 19-181, it is out of date already. *Id.*

The Title Board determined that the abstract was not misleading or inherently prejudicial, and that it should rely on Legislative Council's judgment and approve the fiscal abstract. *See id.,* at 17:58-22:50. This Court should affirm the Title Board's decision not to amend the fiscal abstract for the Initiatives.

III. The Initiatives Titles Correctly and Fairly Express the True Intent and Meaning of the Measure.

A. Standard of Review.

The Title Board is required to set a title that "consist[s] of a brief statement accurately reflecting the central features of the proposed measure." *In re Initiative on "Trespass-Streams with Flowing Water,"* 910 P.2d 21, 24 (Colo. 1996). Titles and submission clauses should "enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal." *In re Initiative for 2009-2010 # 24*, 218 P.3d 350, 356 (Colo. 2009) (*quoting In re Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 242 (Colo. 1990)). The purpose of reviewing an initiative title for clarity parallels that of the single-subject requirement: voter protection through reasonably ascertainable expression of the initiative's purpose. *See id.*

B. Petitioner Should Be Barred from Arguing No Clear Title on Proposed Measures #173, #174 and #176.

Contrary to his assertions in the Petitions for Review for proposed initiatives #173, #174 and #176, Petitioner did not challenge clear title in his Motions for Rehearing on proposed initiatives #173, #174 and #176. *See pp. 4-6 of Exhibit 1 to Petition for Rehearing for #173, pp. 5-7 of Exhibit 1 to Petitions for Rehearing for #174 and #176; See also* Rehearing Audio, 7:41-7:52. As a result, Petitioner should be prohibited from bringing those claims for the first time before this Court.

Section 1-40-107(1)(a)(I), C.R.S. provides that

> [a]ny person presenting an initiative petition or any registered elector who is not satisfied with a decision of the title board with respect to whether a petition contains more than a single subject . . . or who is not satisfied with the titles and submission clause provided by the title board . . . may file a motion for a rehearing . . . within seven days after the decision is made or the titles and submission clause are set.

In *Nova v. Colbert (In re Title)*, 459 P.3d 759 (Colo. 2020), this Court recently interpreted section 1-40-107(1)(a)(I) and stated that it "sets out two kinds of objections a person might have to the Title Board's initial action—either that the single-subject decision was in error or that the title set was improper—and then provides that whichever of those two objections a person has, he must file a motion for rehearing within seven days. Section 1-

40-107(1)(c) then directs that this rehearing process can happen only once." 459 P.3d at 763.

Here, with regard to proposed measures #173, #174, and #176, Petitioner objected that the Title Board's single subject decision was in error but did not object that the title set was improper. No other person raised any objection regarding clear title on measures #173, #174 or #176 at the rehearing before the Title Board. *See* Rehearing Audio, 6:59-46:44.

Just as an objector is barred from bringing a second motion for rehearing where the motion raises arguments that could have been made in the objector's first motion for rehearing, the Petitioner here should be barred from raising issues for the first time before this Court that were not raised below at the rehearing with the Title Board. *See, e.g., In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 219*, 999 P.2d 819, 822 (Colo. 2000).

C. **The Title and Submission Clauses Are Not Misleading.**

The Title for each of the Initiatives is clear and does not mislead the voters. "While titles must be fair, clear, accurate and complete, the Title Board is not required to set out every detail of an initiative." *In re Initiative for 2013-2014 #90*, 328 P.2d at 164. (citations omitted).

The title of each of the Initiatives succinctly captures the key features of the measure, is not likely to mislead voters as to the Initiatives' purpose or effect, nor do the titles conceal some hidden intent. The text of the Initiatives creates a statewide minimum distance requirement for new oil and gas development of at least 2,500 [2,000 for #176 and #177] feet from occupied structures and vulnerable areas. The remainder of each measure contains definitions of terms used in the measure, sets forth implementing details including a provision allowing local governments to increase the setback distance, and #175 and #177 contain an allowance for a homeowner waiver for their principal residence. Each title captures the measure's text in a clear and straightforward manner.

The Petitioner filed Motions for Rehearing on proposed initiatives #175 and #177 in which he objected to those titles concerning the allowance for a waiver of the setback requirement by a homeowner for their principal residence. Petitioner argued before the Title Board that the titles for #175 and #177 are misleading because they do not alert the voter that the waiver does not apply to vacation homes, rented homes, or multi-unit residences, such as apartment buildings. The Title Board rejected this argument and pointed to how the last phrase of each title alerts the voter to the applicability of the waiver by stating: "and allowing a

homeowner to waive the minimum distance requirement for the owner's single-family principal residence."

The Title Board is "only obligated to fairly summarize the central points of a proposed measure, and need not refer to every effect that the measure may have on the current statutory scheme." *In re Initiative for 2013-2014 #90*, 328 P.2d at 164. (citations omitted). "The titles and summary are intended to alert the electorate to the salient characteristics of the proposed measure." *In re Initiative for 1999-2000 #255*, 4 P.3d at 497. The titles for Initiatives #175 and #177 alert the electorate that the waiver only applies to a homeowner's single-family principal residence. This language plainly eliminates second or vacation homes, multi-family residences and apartment buildings by limiting the waiver to a "homeowner's single-family principal residence."

The Court is not to "consider whether the Title Board set the best possible title; rather, [its] duty is to ensure that the title "fairly reflect[s] the proposed initiative so that petition signers and voters will not be misled into support for or against a proposition by reason of the words employed by the Board." *In re Initiative for 2007-2008 #62*, 184 P.3d at 58. Here, the Title of each of the Initiatives succinctly captures the key features of the measure, is not likely to mislead voters as to the initiative's purpose or effect, nor does the title conceal

some hidden intent. Only in a clear case should a title prepared by the Title Board be held invalid. *In re Title, Ballot Title & Submission Clause Pertaining to the Casino Gaming Initiative Adopted on April 21, 1982*, 649 P.2d 303, 306 (Colo. 1982). This is not such a case.

IV. Petitioner's Motion To Disqualify Was Properly Dismissed.

At this juncture, the Proponents will defer to the Attorney General's arguments on behalf of the Secretary of State's designee, Theresa Conley, in response to the Motion to Disqualify argument. The Proponents have not observed any improper bias or conflict of interest on the part of Ms. Conley or the Title Board under her leadership and assert that the Motion to Disqualify was properly dismissed.

CONCLUSION

The Proponents respectfully request the Court to affirm the actions of the Title Board with regard to Proposed Initiative 2019-2020 #173, #174, #175, #176, and #177.

Respectfully submitted this 18th day of March, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of March, 2020 a true and correct copy of the foregoing **RESPONDENTS' OPENING BRIEF** was filed and served via the Colorado Courts E-Filing System to the following:

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In accordance with C.A.R. 30(f), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.