

COLORADO SUPREME COURT 2 East 14th Avenue, Denver, Colorado 80203	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Original Proceeding Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board	
Petitioners: David Davia and Cody Davis v. Title Board: Theresa Conley, Kurt Morrison, and Jason Gelender	
Attorneys for Petitioners: Suzanne Taheri (#23411) Gwendolyn A. Benevento (#34190) MAVEN LAW GROUP 1800 Glenarm Place, Suite 950 Denver, Colorado 80202 Phone: 303.218.7150 Email: staheri@mavenlawgroup.com gbenevento@mavenlawgroup.com	Case No.:
PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2021-2022 #136 (“Colorado Independent Oil and Gas Commission”)	

David Davia and Cody Davis (“Petitioners”), designated representatives of the proponents of Proposed Initiative 2021-2022 #136 (the “Proposed Initiative”), through their undersigned counsel, respectfully petition this Court pursuant to § 1-40-107(2), C.R.S., to review the actions of the Ballot Title Setting Board (“Title

Board”) with respect to its decision to deny setting of a title for the Proposed Initiative on the grounds that the Proposed Initiative does not contain a single subject.

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative

Petitioners are the designated representatives of the proponents of the Proposed Initiative. Petitioners submitted their Proposed Initiative to the Title Board for the setting of a title and submission clause pursuant to § 1-40-106, C.R.S., on April 8, 2022.

The Title Board held a hearing on April 21, 2022, where it determined that the Proposed Initiative did not contain a single subject as required by Colo. Const. art. V, §1(5.5) and § 1-40-106.5, C.R.S., and denied that it had jurisdiction to set a title. On April 27, 2022, Petitioners filed a Motion for Rehearing stating that the Proposed Initiative does not contain multiple separate and distinct subjects in violation of the single-subject requirement. Title Board held a rehearing on April 28, 2020, at which time it determined the Proposed Initiative contained more than a single subject and denied the setting of a title for lack of jurisdiction.

B. Jurisdiction

Petitioners are timely requesting a review of the actions of the Title Board by the Supreme Court pursuant to § 1-40-107(2), C.R.S.

As required by § 1-40-107(2), C.R.S., attached to this Petition for Review are certified copies of the final copy of the Proposed Initiative as submitted to the Title Board, the determination by the Title Board at its initial hearing on the Proposed Initiative, the initial fiscal abstract for the Proposed Initiative prepared by the Director of Research of the Legislative Council of the General Assembly the abstract, the Motion for Rehearing; and the determination by the Title Board to deny the Motion for Rehearing.

GROUNDINGS FOR REVIEW

Petitioners respectfully submit that the Title Board erred in its determination that the Proposed Initiative violates the single subject requirement of Colo. Const. art. V, §1(5.5), and §1-40-106.5, C.R.S.

PRAYER FOR RELIEF

Petitioners respectfully request that, after consideration of the parties' briefs, this Court reverse the determination of the Title Board with direction to set a ballot title and submission clause.

Dated: May 4, 2022

Respectfully submitted,

s/Gwendolyn A. Benevento

Suzanne Taheri #23411

Gwendolyn A. Benevento (#34190)

MAVEN LAW GROUP, LLP

6501 E. Belleview Ave., Suite 375

Englewood, CO 80111

Phone: (303) 218-7150

staheri@mavenlawgroup.com

gbenevento@mavenlawgroup.com

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2022, I electronically filed a true and correct copy of this **Petition** with the Clerk of Court via the Colorado Courts E-Filing System which will send notification of such filing upon counsel of record:

Michael Kotlarczyk, Esq.
Colorado Attorney General's Office
1300 Broadway, 6th Floor
Denver, CO 80203
Michael.kotlarczyk@coag.gov
Attorney for Title Board

Stefanie Mann (#43774)
Senior Assistant Attorney General
Public Officials Unit
State Services Section
Colorado Attorney General's Office
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, Colorado 80203
stefanie.mann@coag.gov
Attorney for Title Board

s/Gwendolyn A. Benevento



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 "2021-2022 #136 'Colorado Independent Oil and Gas Commission'"

..... **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 3rd day of May, 2022.

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. Colorado independent oil and gas commission. (1) Declaration of the people.

THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT:

(a) OIL AND GAS DEVELOPMENT SHOULD BE RIGOROUSLY AND COMPREHENSIVELY REGULATED BY A COMMISSION, AS FAR REMOVED FROM PARTISAN, POLITICAL, AND INTEREST GROUP PRESSURE AS IS PRACTICABLE, IN A MANNER THAT PROTECTS THE PUBLIC HEALTH, SAFETY, AND WELFARE OF CITIZENS IN BALANCE WITH THE RESPONSIBLE DEVELOPMENT OF OIL AND GAS RESOURCES;

(b) OIL AND GAS REGULATION ATTAINED THROUGH OVERLY POLITICAL PROCESSES LEADS TO IRRATIONAL AND ARBITRARY SWINGS IN POLICY THAT NEITHER PROTECT PUBLIC HEALTH NOR PROMOTE REGULATORY CERTAINTY FOR PROPERTY OWNERS, COMMUNITIES, OR OPERATORS;

(c) OIL AND GAS DEVELOPMENT POLICY AND RELATED HEALTH AND SAFETY ISSUES ARE COMPLEX AND REQUIRE PROFESSIONAL EXPERTISE AND IMPARTIAL DECISION-MAKING, AND, TO THAT END, THE INDEPENDENT OIL AND GAS COMMISSION SHOULD CONSIST OF MEMBERS WITH EXPERTISE IN APPLICABLE FIELDS OF SCIENCE, ENGINEERING, ENVIRONMENTAL PROTECTION, AND NATURAL RESOURCE MANAGEMENT, SELECTED THROUGH PROCESSES WITH CHECKS AND BALANCES THAT WOULD PREVENT ANY ONE OR MORE PERSON, POLITICAL PARTY, OR INTEREST GROUP FROM EXERTING CONTROL OR UNDUE INFLUENCE OVER THE DECISIONS OF THE COMMISSION. COMMISSION MEMBERS SHOULD BE SELECTED THROUGH A MERIT-BASED, FAIR, AND NEUTRAL PROCESS THAT AVOIDS APPOINTMENT OF INDIVIDUALS WHO ARE BIASED OR UNQUALIFIED OR WHO HAVE A CONFLICT OF INTEREST, INSTEAD ELEVATING THE VALUES OF SOUND SCIENCE, ENGINEERING PRINCIPLES, AND COLLABORATIVE DECISION-MAKING THAT PRIORITIZE BALANCED AND REASONABLE REGULATORY ACTION.

(d) THE COMMISSION SHALL ESTABLISH RULES AND MAKE DECISIONS THROUGH THE APPLICATION OF BEST AVAILABLE SCIENCE AND ENGINEERING PRINCIPLES AND CONSIDERATION OF LOCAL INPUT, AND SHALL SEEK TO RESOLVE CONFLICTING FACTORS AND VALUES IN A BALANCED, REASONABLE AND JUDICIOUS MANNER.

(2) THERE IS HEREBY CREATED THE COLORADO INDEPENDENT OIL AND GAS COMMISSION.

(3)(a) EFFECTIVE JULY 1, 2023, THE COMMISSION SHALL CONSIST OF SIX MEMBERS, AND EACH SHALL HAVE THE FOLLOWING MINIMUM QUALIFICATIONS:

(I) IS A QUALIFIED ELECTOR OF THIS STATE AND HAS BEEN UNAFFILIATED WITH ANY POLITICAL PARTY OR HAS BEEN AFFILIATED WITH THE SAME POLITICAL PARTY FOR A CONSECUTIVE PERIOD OF NO LESS THAN FIVE YEARS AT THE TIME OF APPOINTMENT;

(II) HAS AT LEAST TEN YEARS OF PROFESSIONAL EXPERIENCE RELEVANT TO THE COMMISSION'S ACTIVITIES AND JURISDICTION.

(b) THE COMMISSION SHALL BE COMPOSED OF TWO MEMBERS WHO ARE NOT AFFILIATED WITH ANY POLITICAL PARTY, TWO MEMBERS WHO ARE AFFILIATED WITH THE STATE'S REPUBLICAN POLITICAL PARTY, AND TWO MEMBERS WHO ARE AFFILIATED WITH THE STATE'S DEMOCRATIC POLITICAL PARTY.

(c) NO PERSON MAY BE APPOINTED TO SERVE ON THE COMMISSION IF THE PERSON HAS A CONFLICT OF INTEREST THAT WOULD HINDER THE ABILITY TO RENDER INFORMED, THOROUGH, AND BALANCED DECISION-MAKING REGARDING OIL AND GAS DEVELOPMENT IN COLORADO. EXAMPLES OF CONFLICTS OF INTEREST INCLUDE HOLDING A FINANCIAL INTEREST IN OR SERVING IN AN OFFICIAL CAPACITY WITH AN ENTITY THAT ADVOCATES FOR OR AGAINST OIL AND GAS DEVELOPMENT WITHIN THE THREE YEARS PRIOR TO APPOINTMENT, OR BEING REGISTERED AS A LOBBYIST WORKING ON ENVIRONMENTAL OR OIL AND GAS ISSUES AT THE LOCAL OR STATE LEVEL. THIS SUBPARAGRAPH (3)(c) SHALL BE CONSTRUED REASONABLY WITH THE OBJECTIVE OF DISQUALIFYING FROM THE COMMISSION ANY PERSON WHO MIGHT HAVE AN IMMEDIATE CONFLICT OF INTEREST OR WHO MAY NOT BE ABLE TO MAKE BALANCED DECISIONS ABOUT OIL AND GAS REGULATION IN COLORADO. A GOVERNMENT OFFICIAL OR PERSON WHO HAS WORKED WITH OR FOR AN ENERGY OR ENVIRONMENTAL ENTITY NEED NOT BE DISQUALIFIED IF THE PERSON'S EXPERIENCE SHOWS SUBJECT MATTER KNOWLEDGE COUPLED WITH AN ABILITY TO RENDER INFORMED, THOROUGH, AND BALANCED DECISION-MAKING.

(4) COMMISSIONERS SHALL BE APPOINTED AS FOLLOWS:

(a) FOR THE INITIAL APPOINTMENT OF COMMISSIONERS EFFECTIVE JULY 1, 2023, ALL SIX COMMISSIONERS SHALL BE CHOSEN FROM A LIST OF TWENTY NOMINEES, AND THE LIST OF NOMINEES SHALL BE ESTABLISHED PURSUANT TO THIS SUBSECTION (4) BY APRIL 1, 2023. THE LIST OF NOMINEES MUST CONSIST OF QUALIFIED INDIVIDUALS AND HAVE A BALANCED REPRESENTATION OF POLITICAL AFFILIATIONS INCLUDING UNAFFILIATED, WITH EACH MAJOR POLITICAL PARTY BEING REPRESENTED EQUALLY.

(b) AFTER JULY 1, 2023, FOR ANY VACANCY ON THE COMMISSION OCCURRING AT THE END OF A TERM OR OTHERWISE, THE COMMISSIONER FILLING THE VACANCY SHALL BE CHOSEN FROM A LIST OF THREE NOMINEES, ESTABLISHED PURSUANT TO THIS SUBSECTION (4), WHO HAVE THE SAME POLITICAL AFFILIATION OR NONAFFILIATION AS THE MEMBER THAT HAS CREATED OR WILL CREATE THE VACANCY. THE LIST OF NOMINEES SHALL BE ESTABLISHED AT LEAST THIRTY DAYS PRIOR TO THE END OF A COMMISSIONER'S TERM, OR WITHIN SIXTY DAYS AFTER ANY OTHER VACANCY.

(c) (I) EACH LIST OF NOMINEES SHALL BE ESTABLISHED THROUGH A JOINT NOMINATION PROCESS AND THE MUTUAL AGREEMENT OF EITHER:

(A) THE GOVERNOR AND, IF THE GOVERNOR IS AFFILIATED WITH A MAJOR POLITICAL PARTY AS DEFINED IN SECTION 1-1-104, COLORADO REVISED STATUTES, THE HIGHEST-RANKING SENATE OFFICER FROM A DIFFERENT MAJOR POLITICAL PARTY; OR

(B) THE GOVERNOR AND, IF THE GOVERNOR IS NOT AFFILIATED WITH A MAJOR POLITICAL PARTY AS DEFINED IN SECTION 1-1-104, COLORADO REVISED STATUTES, THE TWO HIGHEST-RANKING SENATE OFFICERS FROM DIFFERENT MAJOR POLITICAL PARTIES.

(II) IF THE NOMINATION PROCESS IN SECTION (4)(c)(I) OF THIS SECTION FAILS TO PRODUCE THE NUMBER OF NOMINEES IN SUBSECTIONS (4)(a) AND (4)(b) OF THIS SECTION BY THE DATE SPECIFIED, THE PANEL DESIGNATED PURSUANT TO SUBSECTION (4)(d) OF THIS SECTION MAY SOLICIT APPLICANTS TO BE CONSIDERED FOR APPOINTMENT.

(d)(I) THE CHIEF JUSTICE OF THE COLORADO SUPREME COURT SHALL DESIGNATE A PANEL TO APPOINT THE INITIAL MEMBERS AND ADDITIONAL PANELS TO APPOINT MEMBERS TO FILL ANY VACANCY. A PANEL MUST CONSIST OF THREE RETIRED JUSTICES OR JUDGES FROM THE COLORADO SUPREME COURT OR THE COLORADO COURT OF APPEALS. IF FEWER THAN THREE ELIGIBLE PARTICIPANTS FOR THE PANEL HAVE BEEN IDENTIFIED WHO ARE ABLE AND WILLING TO SERVE, THE CHIEF JUSTICE MAY APPOINT RETIRED COLORADO TRIAL COURT JUDGES TO A PANEL. ON ANY GIVEN PANEL, NO PANELIST MAY BE AFFILIATED WITH THE SAME POLITICAL PARTY AS ANOTHER PANELIST, AND ONE PANELIST MUST BE AFFILIATED WITH EACH MAJOR POLITICAL PARTY.

(II) IN SELECTING INDIVIDUALS TO APPOINT TO THE COMMISSION, THE PANEL SHALL CONSIDER NOMINEES' OR APPLICANTS' QUALIFICATIONS AND, TO THE EXTENT POSSIBLE:

(A) SEEK TO HAVE THE MEMBERSHIP OF THE COMMISSION REFLECT COLORADO'S RACIAL, ETHNIC, GENDER, AND GEOGRAPHIC DIVERSITY; AND

(B) ENDEAVOR TO APPOINT MEMBERS THAT REPRESENT A VARIETY OF RELEVANT EXPERTISE, INCLUDING BUT NOT LIMITED TO, PUBLIC HEALTH, ENVIRONMENTAL REGULATION, WILDLIFE PROTECTION, LAND USE PLANNING, OIL AND GAS OPERATIONS, EARTH SCIENCE, ENGINEERING, AGRICULTURAL STEWARDSHIP, AND RESOURCE CONSERVATION AND MANAGEMENT, AND THAT HAVE THE ABILITY TO BE IMPARTIAL.

(III) ALL DECISIONS OF THE PANEL REGARDING THE SELECTION OF NOMINEES OR APPLICANTS PURSUANT TO THIS SUBSECTION (4) OF THIS SECTION REQUIRE THE AFFIRMATIVE APPROVAL OF ALL THREE MEMBERS OF THE PANEL.

(5)(a) COMMISSION MEMBERS SHALL SERVE TERMS OF FOUR YEARS EACH; EXCEPT THAT, FOR THE INITIAL MEMBERS WITH TERMS EFFECTIVE JULY 1, 2023, THE PANEL SHALL APPOINT THREE OF THE MEMBERS AT ITS DISCRETION FOR INITIAL TERMS OF TWO YEARS EACH. IF A COMMISSION MEMBER IS APPOINTED TO FILL AN UNEXPIRED TERM, THAT MEMBER SHALL SERVE FOR THE REMAINDER OF THE UNEXPIRED TERM. MEMBERS MAY BE APPOINTED TO SERVE SUCCESSIVE TERMS BUT SHALL NOT SERVE FOR MORE THAN TEN TOTAL YEARS ON THE COMMISSION.

(b) A MEMBER'S POSITION ON THE COMMISSION WILL BE DEEMED VACANT IF THE MEMBER, HAVING BEEN APPOINTED NOT AFFILIATED WITH A POLITICAL PARTY, AFFILIATES WITH A POLITICAL PARTY DURING THE MEMBER'S TERM. A MEMBER'S POSITION ON THE COMMISSION WILL ALSO BE DEEMED VACANT IF THE MEMBER, HAVING BEEN AFFILIATED WITH ONE OF THE STATE'S TWO LARGEST POLITICAL PARTIES AT THE TIME OF APPOINTMENT, AFFILIATES WITH A DIFFERENT POLITICAL PARTY OR BECOMES UNAFFILIATED WITH ANY POLITICAL PARTY DURING THE MEMBER'S TERM.

(c) A MEMBER MAY BE REMOVED FOR INCOMPETENCY, NEGLECT OF DUTY, CONFLICT OF INTEREST, OR MALFEASANCE IN OFFICE BY THE VOTE OF AT LEAST TWO-THIRDS OF THE COMMISSION MEMBERS, EXCLUDING VACANT SEATS.

(6) A MAJORITY OF THE COMMISSION CONSTITUTES A QUORUM FOR THE TRANSACTION OF ITS BUSINESS. THE COMMISSION SHALL APPOINT A CHAIR AND VICE-CHAIR WHO SHALL POSSESS SUCH QUALIFICATIONS AS MAY BE ESTABLISHED BY THE COMMISSION.

(7) THE MEMBERS OF THE COMMISSION SHALL DEVOTE THEIR ENTIRE TIME TO THE DUTIES OF THEIR OFFICES TO THE EXCLUSION OF ANY OTHER EMPLOYMENT AND ARE ENTITLED TO RECEIVE COMPENSATION AS DESIGNATED BY LAW. THE COMMISSION MEMBERS SHALL BE EXEMPT FROM THE STATE PERSONNEL SYSTEM IN SECTION 13 OF ARTICLE XII OF THIS CONSTITUTION. EACH COMMISSION MEMBER, BEFORE ENTERING UPON THE DUTIES OF OFFICE, SHALL TAKE THE CONSTITUTIONAL OATH OR AFFIRMATION OF OFFICE.

(8) THE COMMISSION SHALL APPOINT A DIRECTOR BY VOTE OF AT LEAST TWO-THIRDS OF THE COMMISSION MEMBERS, EXCLUDING VACANT SEATS, TO SERVE AS THE EXECUTIVE OFFICER OF THE COMMISSION. THE DIRECTOR SHALL HAVE THE QUALIFICATIONS AS MAY BE DEEMED APPROPRIATE BY THE COMMISSION. THE DIRECTOR SHALL BE EXEMPT FROM THE STATE PERSONNEL SYSTEM IN SECTION 13 OF ARTICLE XII OF THIS CONSTITUTION, SHALL SERVE AT THE PLEASURE OF THE COMMISSION, AND SHALL RECEIVE SUCH COMPENSATION AS MAY BE DETERMINED BY THE COMMISSION. BEFORE ENTERING UPON OFFICIAL DUTIES, THE DIRECTOR SHALL SUBSCRIBE TO AN OATH OR AFFIRMATION OF OFFICE.

(9)(a) ALL REGULATORY AUTHORITY OVER OIL AND GAS DEVELOPMENT IS HEREBY VESTED IN THE COMMISSION, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION.

(b) IN THE EXECUTION OF THE POWERS VESTED IN THE COMMISSION, THE COMMISSION SHALL REGULATE OIL AND GAS OPERATIONS IN A REASONABLE MANNER TO MINIMIZE ADVERSE IMPACTS TO PUBLIC HEALTH, SAFETY, AND WELFARE, THE ENVIRONMENT, AND WILDLIFE RESOURCES AND SHALL PROTECT AGAINST ADVERSE ENVIRONMENTAL IMPACTS ON ANY AIR, WATER, SOIL, OR BIOLOGICAL RESOURCE RESULTING FROM OIL AND GAS OPERATIONS.

(c) THE COMMISSION SHALL ENSURE THAT OPPORTUNITIES FOR PUBLIC COMMENT ARE MEANINGFUL AND REASONABLE.

(d) THE COMMISSION SHALL ADOPT AS ITS INITIAL RULES AND POLICIES THE OIL AND GAS CONSERVATION COMMISSION RULES AND POLICIES AS THEY EXISTED ON THE EFFECTIVE DATE OF THIS SECTION. THESE INITIAL RULES AND POLICIES MAY BE ADOPTED WITHOUT PRIOR NOTICE, OPPORTUNITY FOR COMMENT, HEARING, OR OTHER USUAL RULEMAKING PROCEDURES.

(e) THE COMMISSION'S AUTHORITY TO RENDER DECISIONS TO APPROVE OR DENY PERMIT APPLICATIONS AND RENEWALS IS DELEGATED TO THE DIRECTOR. THE COMMISSION SHALL PROMULGATE SUCH RULES AS MAY BE NECESSARY AND PROPER FOR THE ORDERLY, EFFECTIVE, AND EFFICIENT ADMINISTRATION OF PERMITS BY THE DIRECTOR. THE DIRECTOR SHALL ISSUE PERMITS IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION AND RULES PROMULGATED BY THE COMMISSION. A PERMIT APPLICANT MAY REQUEST A HEARING BY THE COMMISSION TO REVIEW THE DIRECTOR'S DECISION REGARDING THE APPLICANT'S PERMIT, PURSUANT TO RULES ESTABLISHED BY THE COMMISSION, AND THE COMMISSION MAY OVERTURN THE DIRECTOR'S

DECISION REGARDING ISSUANCE OR DENIAL OF A PERMIT BY AT LEAST TWO-THIRDS VOTE OF THE COMMISSION, EXCLUDING VACANT SEATS. SUCH COMMISSION DECISION IS FINAL AND SUBJECT TO JUDICIAL REVIEW IN A COURT OF COMPETENT JURISDICTION.

(10) THE COMMISSION'S AUTHORITY SUPERSEDES PRIOR GRANTS OF AUTHORITY CONCERNING OIL AND GAS DEVELOPMENT IN THE STATE, EXCEPT AS PROVIDED IN SECTION 34-60-105(4), COLORADO REVISED STATUTES, AS OF THE DATE OF ENACTMENT OF THIS SECTION; AND EXCEPT THAT, BECAUSE THE FOLLOWING AREAS OF REGULATION ARE OF SUCH IMPORTANCE IN BALANCING THE PUBLIC HEALTH, SAFETY AND WELFARE OF CITIZENS WITH RESPONSIBLE DEVELOPMENT THAT REVIEW AND OVERSIGHT BY MORE THAN ONE AUTHORITY IS WARRANTED, THE FOLLOWING ENTITIES OR ANY SUCCESSOR ENTITIES HAVE THE AUTHORITY TO ADOPT RULES PURSUANT TO THE FOLLOWING STATUTES OR SUCCESSOR STATUTES, BUT SUCH RULES SHALL ONLY BECOME EFFECTIVE UPON APPROVAL OF THE COMMISSION:

(a) THE AIR QUALITY CONTROL COMMISSION FOR RULES REGARDING ARTICLE 7 OF TITLE 25, COLORADO REVISED STATUTES, THE EMISSION OF AIR POLLUTANTS FROM OIL AND GAS OPERATIONS;

(b) THE WATER QUALITY CONTROL COMMISSION FOR RULES REGARDING ARTICLE 8 OF TITLE 25, COLORADO REVISED STATUTES, THE DISCHARGE OF WATER POLLUTANTS FROM OIL AND GAS OPERATIONS;

(c) THE STATE BOARD OF HEALTH FOR RULES REGARDING SECTION 25-11-104, COLORADO REVISED STATUTES, THE DISPOSAL OF NATURALLY OCCURRING RADIOACTIVE MATERIALS AND TECHNOLOGICALLY ENHANCED NATURALLY OCCURRING RADIOACTIVE MATERIALS FROM OIL AND GAS OPERATIONS; AND

(d) THE SOLID AND HAZARDOUS WASTE COMMISSION FOR RULES REGARDING:

(I) ARTICLE 15 OF TITLE 25, COLORADO REVISED STATUTES, THE DISPOSAL OF HAZARDOUS WASTE FROM OIL AND GAS OPERATIONS; OR

(II) SECTION 30-20-109(1.5), COLORADO REVISED STATUTES, THE DISPOSAL OF EXPLORATION AND PRODUCTION WASTE FROM OIL AND GAS OPERATIONS.

(e) NOTHING IN THIS SUBSECTION (10) SHALL AFFECT THE CONTINUANCE OF RULES PROMULGATED BY ANY AGENCY PRIOR TO JULY 1, 2023, REGARDING OIL AND GAS OPERATIONS, AND SUCH RULES SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL MODIFIED, SUPERSEDED, OR REPEALED. THIS SUBSECTION (10) DOES NOT APPLY TO OR SUPERSEDE EXISTING PERMITS ISSUED PRIOR TO JULY 1, 2023.

(11) NOTHING IN THIS SECTION ALTERS, IMPAIRS, OR NEGATES THE AUTHORITY OF A LOCAL GOVERNMENT TO REGULATE OIL AND GAS DEVELOPMENT PURSUANT TO ARTICLE 65.1 OF TITLE 24 AND SECTIONS 29-20-104 AND 34-60-131, COLORADO REVISED STATUTES.

(13) THE GENERAL ASSEMBLY SHALL APPROPRIATE REASONABLE AND NECESSARY FUNDS TO COVER STAFF AND ADMINISTRATIVE EXPENSES TO ALLOW THE COMMISSION TO CARRY OUT ITS DUTIES PURSUANT TO THIS SECTION.

SECTION 2. In the constitution of the state of Colorado, section 13 of article XII, **amend** (2)(a)(I) as follows:

Section 13. State personnel system – merit system.

(2)(a) The state personnel system shall comprise all appointive public officers and employees of the state, except the following:

(I) Members of the public utilities commission, the industrial commission of Colorado, the state board of land commissioners, the Colorado tax commission, the state parole board, ~~and~~ the state personnel board, AND THE COLORADO INDEPENDENT OIL AND GAS COMMISSION;

SECTION 3. In Colorado Revised Statutes, 24-1-124, **amend** (3)(f) as follows:

24-1-124. Department of natural resources - creation - divisions.

(3) The department of natural resources consists of the following divisions:

(f) ~~The oil and gas conservation commission of the state of Colorado~~ COLORADO INDEPENDENT OIL AND GAS COMMISSION and the office of the director thereof, created by ~~article 60 of title 34, C.R.S.~~ SECTION 17 OF ARTICLE XVIII OF THE STATE CONSTITUTION. ~~Said commission and office and the powers, duties, and functions thereof are transferred by a type 1 transfer to the department of natural resources as a division thereof.~~ THE COMMISSION SHALL EXERCISE ITS POWERS AND PERFORM ITS DUTIES AND FUNCTIONS AS IF THE SAME WERE TRANSFERRED BY A **TYPE 1** TRANSFER.

SECTION 4. In Colorado Revised Statutes, 34-60-103, **amend** (2) as follows:

34-60-103. Definitions.

As used in this article 60, unless the context otherwise requires:

(2) "Commission" means ~~the oil and gas conservation commission~~ COLORADO INDEPENDENT OIL AND GAS COMMISSION ESTABLISHED IN SECTION 17 OF ARTICLE XVIII OF THE STATE CONSTITUTION.

SECTION 5. In Colorado Revised Statutes, **repeal** 34-60-104.3.

SECTION 6. In Colorado Revised Statutes, 34-60-104.5, **repeal** (1) as follows:

34-60-104.5. Director of commission – duties. (1) ~~Pursuant to section 13 of article XII of the state constitution, the executive director of the department of natural resources shall appoint a director of the commission who shall possess such qualifications as may be established by the executive director, the commission, and the state personnel board.~~

SECTION 7. In Colorado Revised Statutes, 34-60-105, **repeal** (1)(b) as follows:

34-60-105. Powers of commission.

~~(1)(b) Any delegation of authority to any other state officer, board, or commission to administer any other laws of this state relating to the conservation of oil or gas, or either of them, is hereby rescinded and withdrawn, and that authority is unqualifiedly conferred upon the commission, as provided in this section; except that, as further specified in section 34-60-131, nothing in this article 60 alters, impairs, or negates the authority of:~~

~~(I) The air quality control commission to regulate, pursuant to article 7 of title 25, the emission of air pollutants from oil and gas operations;~~

~~(II) The water quality control commission to regulate, pursuant to article 8 of title 25, the discharge of water pollutants from oil and gas operations;~~

~~(III) The state board of health to regulate, pursuant to section 25-11-104, the disposal of naturally occurring radioactive materials and technologically enhanced naturally occurring radioactive materials from oil and gas operations;~~

~~(IV) The solid and hazardous waste commission to:~~

~~(A) Regulate, pursuant to article 15 of title 25, the disposal of hazardous waste from oil and gas operations; or~~

~~(B) Regulate, pursuant to section 30-20-109(1.5), the disposal of exploration and production waste from oil and gas operations; and~~

~~(V) A local government to regulate oil and gas operations pursuant to section 29-20-104.~~

SECTION 8. In Colorado Revised Statutes, **amend** 34-60-131 as follows:

34-60-131. No land use preemption.

Local governments, THE COLORADO INDEPENDENT OIL AND GAS COMMISSION, and state agencies, ~~including the commission and agencies listed in section 34-60-105(1)(b)~~, AS PROVIDED IN SECTION 17 OF ARTICLE XVIII OF THE STATE CONSTITUTION, have regulatory authority over oil and gas development, ~~including as specified in section 34-60-105(1)(b)~~. A local government's regulations may be more protective or stricter than state requirements.

SECTION 9. In Colorado Revised Statutes, **add** 34-60-132 as follows:

34-60-132. Commission ethics.

(1) MEMBERS OF THE COMMISSION ARE GUARDIANS OF THE PUBLIC TRUST AND ARE SUBJECT TO ANTIBRIBERY AND ABUSE OF PUBLIC OFFICE REQUIREMENTS AS PROVIDED IN PARTS 3 AND 4 OF ARTICLE 8 OF TITLE 18.

(2) TO ENSURE TRANSPARENCY IN THE OIL AND GAS REGULATORY PROCESS:

(a) THE COMMISSION AND THE APPOINTING PANELS ARE SUBJECT TO OPEN MEETINGS REQUIREMENTS AS PROVIDED IN PART 4 OF ARTICLE 6 OF TITLE 24;

(b) THE COMMISSION, EACH COMMISSION MEMBER, COMMISSION STAFF, AND THE APPOINTING PANELS ARE SUBJECT TO OPEN RECORDS REQUIREMENTS AS PROVIDED IN PART 2 OF ARTICLE 72 OF TITLE 24; AND

(c) THE COMMISSION MEMBERS ARE “COVERED OFFICIALS” UNDER SECTION 24-6-301(1.7)(b) AND PART 3 OF ARTICLE 6 OF TITLE 24 SHALL APPLY.

SECTION 10. In Colorado Revised Statutes, 39-29-109.3, **amend** (1)(a) as follows:

39-29-109.3. Severance tax operational fund--core reserve--grant program reserve--definitions—repeal.

(1) The executive director of the department of natural resources shall submit with the department's budget request for each fiscal year a list and description of the programs the executive director recommends to be funded from the severance tax operational fund created in section 39-29-109(2)(b), referred to in this section as the “operational fund”. The general assembly may appropriate money from the total money available in the operational fund to fund recommended programs as follows:

(a)(I) For programs or projects within the ~~Colorado oil and gas conservation commission~~ COLORADO INDEPENDENT OIL AND GAS COMMISSION, up to thirty-five percent of the moneys in the operational fund for fiscal years commencing on or after ~~July 1, 2009~~ JULY 1, 2023.

(II) Moneys appropriated for programs or projects pursuant to subparagraph (I) of this paragraph (a) shall be used by the ~~Colorado oil and gas conservation commission~~ COLORADO INDEPENDENT OIL AND GAS COMMISSION for plugging and abandonment projects, for well-site location reclamation projects, or for regulatory and environmental programs or projects as specifically appropriated by the general assembly for use on such programs or projects; except that, if the commission determines that an emergency exists, the commission may expend any moneys received for the emergency without any further appropriation. In determining the uses of these moneys, the commission shall give priority to uses that reduce industry fees and mill levies.

SECTION 11. Revisor of statutes.

The revisor of statutes is authorized to change all references to the oil and gas conservation commission and sections 34-60-104 and 104.3, Colorado Revised Statutes, in the Colorado Revised Statutes to refer to the Colorado independent oil and gas commission and section 17 of article XVIII of the state constitution.

SECTION 12. Severability.

If any provision of this initiative or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the initiative that can be given effect without the invalid provision or application, and to this end the provisions of this initiative are declared to be severable.

SECTION 13. Effective date.

Sections 1, 2, 12, and 13 of this initiative take effect upon the proclamation of the Governor. All other sections of this act take effect on July 1, 2023.

Ballot Title Setting Board

Proposed Initiative 2021-2022 #136¹

Hearing April 21, 2022

Title setting denied on the basis that the measure does not constitute a single subject (2-1, Gelender dissented).

Board members: Theresa Conley, Kurt Morrison, Jason Gelender

Hearing adjourned 2:40 P.M.

Rehearing April 28, 2022:

Motion for Rehearing denied. (2-1, Gelender dissented)

Board members: Theresa Conley, Kurt Morrison, Jason Gelender

Hearing adjourned: 11:48 A.M.

¹ Unofficially captioned “**Colorado Independent Oil and Gas Commission**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Ballot Title Setting Board

Proposed Initiative 2021-2022 #136¹

Hearing April 21, 2022

Title setting denied on the basis that the measure does not constitute a single subject (2-1, Gelender dissented).

Board members: Theresa Conley, Kurt Morrison, Jason Gelender

Hearing adjourned 2:40 P.M.

¹ Unofficially captioned “**Colorado Independent Oil and Gas Commission**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR INITIATIVE 2021-2022 #136

MOTION FOR REHEARING

On behalf of David Davia and Commissioner Cody Davis, designated representatives for Initiative 2021-2022 #136 (“Initiative”), the undersigned counsel hereby submits this Motion for Rehearing of the Title Board’s April 21, 2022, decision to deny setting of a title for the Initiative on the grounds that the initiative does not contain a single subject.

The designated representatives assert that the Initiative does not contain multiple separate and distinct subjects in violation of the single-subject requirement. The Initiative establishes an independent regulatory board to replace the Colorado oil and gas conservation commission. The appointment process and scope of authority of the proposed independent oil and gas commission is designed to separate decisions about oil and gas development from partisan political bias and interest group pressure. The initiative provides regulatory authority to the independent board and defines the scope of authority other agencies have over oil and gas operations. The provisions of the Initiative are properly related, and the Title Board must find single subject in accordance with the law.

Provisions that describe “part of the legal framework” necessary to achieve the purposes of the Initiative are “properly connected to the subject.” *In re 2013-2014 #89*, 328 P.3d at 177. Provisions that address the scope of governmental authority are “‘sufficiently narrow and sufficiently connected’ ... to satisfy the single subject rule.” *In re Title, Ballot Title, Submission Clause for 2011-2012 No. 45*, 274 P.3d 576, 581 (Colo. 2012), citing *In re Proposed Initiative 2001–02 No. 43*, 46 P.3d 438 (Colo. 2002).

“[T]he mere fact that a constitutional amendment may affect the powers exercised by government under pre-existing constitutional provisions does not, taken alone, demonstrate that a proposal embraces more than one subject. All proposed constitutional amendments or laws would have the effect of changing the status quo in some respect if adopted by the voters.” *In re 1999-2000 No. 258(A)*, 4 P.3d at 1098. Authorizing the independent commission to make regulatory decisions that affect the power of another executive agency follows directly and logically from the central focus of the Initiative and does not constitute a separate subject. *Id.*

The single subject requirement must be construed liberally so as not to impose undue restrictions on the initiative process and to preserve and protect right of initiative and referendum. *Bruce v. City of Colorado Springs*, 252 P.3d 30 (Colo. App. 2010); and *Matter of Title, Ballot Title and Submission Clause, and Summary with Regard to a Proposed Petition for an Amendment to Constitution of State of Colo. Adding Subsection (10) to Sec. 20 of Art. X (Amend Tabor 25)*, 900 P.2d 121 (Colo. 1995).

In 2020 the title board set title for a proposed initiative 2019-2020 #311 (“Initiative #311”), which created an independent oil and gas commission with an independent appointment process. The proposed independent commission would take over the duties and responsibilities of the current oil and gas conservation commission, and, in addition, the new commission would have comprehensive authority over oil and gas regulation, specifically including the authority to approve regulations issued by other agencies that would affect oil and gas operations in Colorado. The Title Board had significant discussions at the time regarding the authority of the new Commission and specifically regarding the new commission's authority to regulate in areas that affected oil and gas regulations but were under the purview of other executive agencies in existing law.

This initiative is substantively the same as Proposed Initiative 2019-2020 #311, which had title set and was reviewed by petition to the Colorado Supreme Court, with the Court affirming the jurisdiction and title set by the title board. Colorado Supreme Court Case 2020SA160 (June 11, 2020). The opening brief submitted by the Title Board’s own attorneys argued that “[t]he measure’s provision changing the rulemaking authority of existing state agencies is merely an effect that #311 has on existing law, not an impermissible second subject.” Title Board Opening Brief for Supreme Court Case 2020SA160, Page 4, ¶ 1.

In addition, the concepts contained in the Initiative are the same as the concepts contained in Colorado Senate Bill 19-181 (“SB 181”), which was signed into law on April 16, 2019, and which was also required to have a single subject under Colo. Const art. V, §21. Assuming SB 181 properly contained a single subject, the Initiative also properly contains one. SB 181 revamped the Colorado oil and gas conservation commission, redefined its scope of authority, and specifically addressed how its authority relates to that of other state agencies.

Concerns raised at the initial Title Board hearing for the Initiative regarding the functions of the new independent commission and about the nature of changes to the commission’s authority are issues of merit. A single initiative may make changes on a large scale and still be fully within a single subject.

The case cited at the initial hearing regarding the issue of shifting of authority between executive departments is clearly distinguishable from the provisions of the Initiative. *See Howes v. Brown*, 235 P.3d 1071 (Colo. 2010). In that case, the proposed initiative would have placed a four-year prohibition on the authority of the General Assembly to legislate in a specific area of law. The Initiative, however, simply shifts regulatory authority from one executive department to another. These provisions of the Initiative are far from an infringement on the General Assembly’s authority. While the “legislative power of the state shall be vested in the general assembly ... the people reserve to themselves the power to propose laws and amendments to the constitution and to enact or reject the same at the polls independent of the general assembly and also reserve power at their own option to approve or reject at the polls any act or item, section, or part of any act of the general assembly.” Colo. Const. Art. V, Section 1(1).

Also in that case, the restriction of legislative authority did not relate directly to the proposed initiative’s single subject. Specifically, related to that initiative the court found “no

necessary and proper connection between the establishment and administration of a beverage container tax and a prolonged prohibition on the exercise of the General Assembly's authority over the basin roundtables and the interbasin compact committee.” *Id.* At 1080. The Initiative is defining of the scope of authority of the independent oil and gas commission which it establishes, and this is directly related to the single subject.

The designated representatives are required to craft an initiative that does not contain more than one subject. In response to concern at the hearing that the statement of single subject offered by the proponents was not comprehensive enough, the designated representatives will modify their proposal of the the single subject of the Initiative to be the same as the single subject proposed for Initiative #311, which is also consistent with SB 181. The single subject of the Initiative is “concerning the regulation of oil and gas operations.”

Accordingly, the designated representatives respectfully request that this Motion for Rehearing be granted and a title set pursuant to C.R.S. § 1-40-107(1).

Respectfully submitted this 27th day of April, 2022.

s/ Gwen Benevento
Suzanne Taheri
Gwen Benevento
MAVEN LAW GROUP
1600 Broadway, Suite 1600
Denver, CO 80202
Phone: (303) 218-7150
staheri@mavenlawgroup.com
gbenevento@mavenlawgroup.com

Attorneys for Designated Representatives



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

Initiative 136

Fiscal Summary

Date:	April 19, 2022	Fiscal Analyst:	Josh Abram (303-866-3561)
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LCS TITLE: COLORADO INDEPENDENT OIL AND GAS COMMISSION

Fiscal Summary of Initiative 136

This fiscal summary, prepared by the nonpartisan Director of Research of the Legislative Council, contains a preliminary assessment of the measure's fiscal impact. A full fiscal impact statement for this initiative is or will be available at www.coloradobluebook.com. This fiscal summary identifies the following impact.

State revenue and expenditures. Under current law, the Colorado Oil and Gas Conservation Commission (COGCC) in the Department of Natural Resources (DNR) regulates the development and production of oil and gas in the state. Initiative 136 creates the Independent Oil and Gas Commission as a new division in the DNR to replace the COGCC. The measure results in no net change in the expenses related to the regulation of oil and gas, or operations of the COGCC and its staff. Under current law, these expenses are paid using revenue from permit fees, fines, and a mill levy assessment on oil and gas development.

The measure increases expenditures and staff for the Colorado Department of Public Health and Environment to coordinate co-regulatory activities and joint approval of rules with the independent commission, and in the Department of Law to provide legal services to state departments for rulemaking and the transfer of responsibilities from the COGCC to the new division. To establish the commission, expenditures increase for the Judicial Department to compensate a panel of retired judges to make the initial selection of commission members.

Economic impacts. While the new commission may make future decisions that differ from those that the existing COGCC would have made, these decisions and their potential economic impacts cannot be known in advance. The change in governing structure under Initiative 136 itself has no direct impact on the state's economy.