

<b>COLORADO SUPREME COURT</b> 2 East 14th Avenue, Denver, Colorado 80203	
Original Proceeding 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 2021- 2022 #136 <b>Petitioners:</b> David Davia and Cody Davis v. <b>Respondents:</b>  <b>Title Board:</b> Theresa Conley, Kurt Morrison, and Jason Gelender and <b>Objector:</b> Kelly Nordini	<b>▲ COURT USE ONLY ▲</b>
<b>Attorneys for Petitioners:</b>  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.: 2022SA124
<b>Petitioners' Answer Brief</b>	

## CERTIFICATE OF COMPLIANCE

I certify that this brief complies with all requirements of Colorado Appellate Rules 28 and 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

**The brief complies with the applicable word limits set forth in Colorado Appellate Rule 28(g).**

It contains **1,001** words (opening brief does not exceed 9,500 words).

**The brief complies with the standard of review requirements set forth in Colorado Appellate Rule 28(a)(7)(A).**

For each issue raised by Petitioner, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

**I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of Colorado Appellate Rules 28 and 32.**

*s/Gwendolyn A. Benevento*

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## INTRODUCTION

The Title Board erred in denying jurisdiction to set a title for Proposed Initiative 2021-2022 #136 (“Proposed Initiative”) because the measure contains more than a single subject in violation of Colo. Const. art. V, §1(5.5) and section 1-40-106.5(1)(e), C.R.S. (2021). First, the provision requiring the new independent oil and gas commission’s final approval of other agency oil and gas rulemakings is critical to the cohesive functioning of the comprehensive and impartial regulatory regime the Proponents seek to create. Second, the potential impact of the Proposed Initiative is not relevant to the single subject discussion. For these reasons, the decision of the Title Board should be overturned.

## ARGUMENT

- I. Creating a new independent oil and gas commission and defining the new commission’s authority pertaining to oil and gas is within a single subject, even though that authority affects the preexisting authority of other government entities.**

The voters, in exercising their right to initiative, may decide that it is necessary to usurp authority from the Governor and grant it to an independent commission in their effort to transform the current practice of “oil and gas regulation attained through overly political processes lead[ing] to irrational and arbitrary swings in policy that neither protect public health nor promote regulatory

certainty for property owners, communities, or operators.” Proposed Initiative Section 1, adding add section 17(b) to proposed Colo. Const. art. XVIII.

Conferring the independent commission with authority to approve all new rules promulgated by four executive agencies that affect oil and gas operations is a shift in governmental powers that is critical to the commission’s independence, and is therefore, necessary or proper connection to the central purpose of the initiative. *Howes v. Brown (In the Matter of the Title, Ballot Title and Submission Clause for 2009-2010 # 91)*, 235 P.3d 1071, 1077 (Colo. 2010).

The Proposed Initiative may contain several purposes because they are interrelated. *Id.* at 1076, citing *Gonzalez-Estay v. Lamm (In re Title & Ballot Title & Submission Clause for 2005-2006 # 55)*, 138 P.3d 273, 278 (Colo. 2006).

Creating a new commission with new or expanded authority will necessarily require reallocation of authority from other government entities. It would be redundant and illogical if, going forward, voters and legislators are required to bring two separate yet related initiatives—one to establish a new commission and a separate measure to define its authority, and fortunately this is not required by this Court’s single subject precedent.

This Court has rejected single subject arguments similar to Respondent’s, holding that an initiative creating new requirements for a judicial discipline

commission membership and defining its newly created authority constitutes a single subject. *See Aisenberg v. Campbell (In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 246(e))*, 8 P.3d 1194, 1196-97 (Colo. 2000). The initiative created new requirements for the composition, selection, and terms of members of the Commission on Judicial Discipline also defined new powers and responsibilities for the commission. *Id.* at 1196-97. Among other things, the initiative transferred authority over commission procedures from the supreme court to the general assembly and repealed supreme court authority to appoint special masters. *Id.* at 1199. The creation of the commission, defining of its authority, and transferring authority from another branch of government were properly “tied to the central focus of judicial discipline, which is a discrete subject that is not overbroad in relation to the initiative’s content.” *Id.* at 1197.

The Title Board and this Court were fully briefed on this single subject issue when considering proposed initiative 2019-2020 #311 (Initiative #311). See Respondents’ Op. Br., 11 2020SA160 and Petitioners’ Op. Br., 8 2020SA160 (argument titled “Granting the new board veto authority over certain rules promulgated by four other state agencies is a second subject”), and Title Board Op. Br. 7-8 2020SA160 (“#311’s change to the current rulemaking authority of existing state agencies does not constitute an impermissible second subject”).

This Court properly decided then that creating an independent commission and providing comprehensive authority, including transferring authority from other agencies to the board, was properly within a single subject. *In re Title, Ballot Title, & Submission Clause for 2019-2020 #311, 2020SA160 (aff'd without opinion)*.

This decision was congruent with previous ballot measures creating the independent redistricting commissions and independent ethics commission which removed authority from the legislature and governor over redistricting and ethics and then gave authority to newly created independent commissions over these areas, establishing rules, requirements, procedures, mandates and also providing standards of review and other requirements to guide the deliberations and decisions of these newly created independent commissions.

**II. Concern over the impact on state, local, and tribal governments, special districts, surface owners, and impacted residents is a question of merit, not single subject.**

The potential impact of the Proposed Initiative is not relevant to the single subject discussion. A measure does not violate the single subject requirement simply because it may have effects on other provisions of Colorado law. See *Cordero v. Leahy (In re Title, Ballot Title and Submission Clause for 2013-2014 #90 & #93, 328 P.3d 155, 160-61 (Colo. 2014)*. Such effects are “irrelevant” to



whether the measure contains a single subject. *Id.* at 160 (quoting *In re Title, Ballot Title & Submission Clause for 2011-2012 #3*, 274 P.3d 562, 568 n.2 (Colo. 2012)).

Even if the Proposed Initiative directly addressed the impact on other entities, as Respondents themselves have pointed out, “Senate Bill 19-181 expanded the authority of local governments over surface impacts of oil and gas operations, and, therefore, their standing, to participate in Commission proceedings relevant to those surface impacts.” Objector’s Op. Br., 13 2022SA124. Just as it was, presumably, within the single subject for the general assembly to address local government authority and standing in Senate Bill 19-181, it would be within the single subject of the Proposed Initiative to do the same thing.

### CONCLUSION

For all the foregoing reasons, Petitioners respectfully request that the Court overturn the actions of the Title Board with regard to the Proposed Initiative because it contains a single subject.

Dated: May 16, 2022

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2022, I electronically filed a true and correct copy of this **Petitioners' Opening Brief** with the Clerk of Court via the Colorado Courts E-Filing System which will send notification of such filing upon counsel of record:

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