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COLORADO SUPREME COURT
2 East 14th Avenue
Denver, Colorado 80203

Original Proceeding Pursuant to
§ 1-40-107(2), C.R.S. (2021-2022)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #150

Petitioner: Alethia Morgan

v.

Respondents: Evelyn Hammond and Lucas Granillo

and

Title Board: Theresa Conley, Jeremiah Barry, and Kurt Morrison

▲ **COURT USE ONLY** ▲

Case No. 2024SA92

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THE TITLE BOARD'S ANSWER BRIEF

CERTIFICATE OF COMPLIANCE

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

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

It contains 1,504 words.

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

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ARGUMENT

I. Initiative #150 contains a single subject.

Initiative #150 contains a single subject – removal of damages caps. Morgan's litany of possible impacts on other laws does not change this fact. This Court's single-subject review does not encompass an analysis of the potential ramifications of a measure. *In Re Proposed Initiative 1996-6 v. Hufford*, 917 P.2d 1277, 1281 (Colo. 1996). While this Court must "sufficiently examine" #150 before concluding it contains only a single subject, Pet.'s Op. Br. 8, that means a review of the proposed measure's plain language, not a detailed catalogue of potential impacts. *See In re Title, Ballot Title, Submission Clause for 2009-2010 No. 91*, 235 P.3d 1071, 1076 (Colo. 2010) ("We apply general rules of statutory construction and accord the language of the initiative its plain meaning.").

A. Examination of the proposed measure's plain language demonstrates a single subject.

Initiative #150's plain language shows that there is only a single subject – removal of damages caps.

1. This Court's evaluation of whether an initiative has a single subject depends on examination of its plain language.

In her argument that #150 contains multiple, incongruous subjects, Morgan relies on cases in which this Court concluded an initiative contained multiple subjects even though "at first glance" there appeared to be a central, connecting theme. In these cases, however, the multiple subjects were evident from the plain language of the proposed initiative. These cases demonstrate that "sufficient examination" means review of the initiative's plain language.

In the case Morgan relied on involving a ballot initiative that would have restricted non-emergency services to lawfully present citizens and aliens, Pet's Op. Br. 8-9, this Court emphasized that the proposed measure did not define "non-emergency," or "services" when determining there were multiple subjects. *In re Title & Ballot Title & Submission Clause for 2005-2006 #55*, 138 P.3d 273, 279 (Colo. 2006), *as modified on denial of reh'g* (June 26, 2006). This Court concluded the lack of a clear, narrow definition hid the "[i]nitiative's complexity and omnibus proportions." *Id.* at 282.

In the case cited involving the public trust doctrine initiative, Pet's Op. Br. 9, this Court concluded there were multiple subjects after reviewing the plain language. Although "[a]t first glance, this initiative may seem to propose only the creation of an environmental conservation department with a conservation stewardship mission . . . , a plain reading of the initiative's language also reveals the inclusion of a public trust standard for agency decision-making." *In re Title, Ballot Title & Submission Clause, for 2007-2008, #17*, 172 P.3d 871, 874 (Colo. 2007), *as modified on denial of reh'g* (Dec. 17, 2007) (emphasis added). Similarly, a ballot initiative that aimed "to protect and preserve the waters of the state" by imposing a beverage container tax, Pet's Op. Br. 9, was held to have two subjects because unrelated provisions about water management and supply challenges were "coiled in the folds" of the initiative's language. *In re 2009-2010 No. 91*, 235 P.3d at 1073, 1077.

The multiple subjects in these initiatives were evident from the proposed language. That is not the case with #150.

2. #150's plain language shows there is a single subject.

A plain reading of #150 does not expose an additional subject beyond the removal of damages caps. The text of the initiative includes four brief provisions: (1) a provision granting the right to recover all damages awarded in a case involving[1] catastrophic injury or wrongful death, (2) a statement that a plaintiff must prove the existence of a "catastrophic injury" by a preponderance of the evidence, (3) a definitions section that defines, *inter alia*, "catastrophic injury" and "wrongful death" and (4) a provision noting the exceptions to this law. Record p 3.

#150 includes definitions for the terms central to the initiative and its title, thus avoiding vagueness and hidden complexities. It also does not "coil" additional purposes beyond damages caps "in the folds" of the

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[1] Morgan's brief argues that use of the word "involving" is "surreptitious" here because the proposed measure would apply to damages caused by something other than a catastrophic injury, for example a bad-faith breach of insurance claims that "involved" a catastrophic injury. Pet. Op. Br. at 11. Morgan does not assert that this creates another subject or renders the title unclear. This statement appears to be an objection to the merits of #150 which is not the function of this Court's review.

language. Rather, each provision is directly tied to the single subject of elimination of damages caps. At first glance, this initiative seeks to remove damages caps for cases involving catastrophic injury and wrongful death. Careful examination of the measure's text reflects this same purpose and no others.

As acknowledged in Morgan's Opening Brief, the proposed "sufficient examination" of #150 was conducted "[t]hrough independent research, which voters are not likely to undertake." Pet's Op. Br. 12. Morgan's assessment far exceeds a plain meaning analysis. *See id.* at 4 ("Because of how Initiative #150 is constructed, it would be difficult for even a savvy personal injury attorney to identify and understand all the surprises baked within its provisions.").

B. The plain meaning of #150 does not alter the burden of proof for enhanced or non-economic damages.

Contrary to Morgan's assertion, #150 plainly does not alter the burden of proof for enhanced or non-economic damages. The proposed language of #150 provides that "[t]he party seeking damages bears the burden of proving that the injured person suffered a catastrophic injury

by a preponderance of the evidence." Record, p 3. As written, this is a threshold inquiry that a plaintiff must establish before this law will apply to the awarded damages. It is an "implementation detail[] directly tied to the initiative's single subject" and does not "constitute a separate subject." *In re Initiative for 2005-06 #73*, 135 P.3d 736, 739 (Colo. 2006).

There is also nothing in the language of #150 that would eliminate the "heightened burden of proof for both the enhancement of damages" or "the eligibility for non-economic damages," as Morgan suggests. *See* Pet's Op. Br. at 22-23. Nor does the proposed measure say anything about who must make the finding – judge or jury – in the case of derivative noneconomic damages for a non-injured party. *See id.* at 23. This Court may not read words into an initiative that are not there. *See Matter of Title, Ballot Title & Submission Clause for 2019-2020 #315*, 2020 CO 61, ¶ 8 ("In conducting this limited [single subject] inquiry, we employ the general rules of statutory construction, giving words and phrases their plain and ordinary meanings."); *People v. Brown*, 2019 CO 50, ¶ 17 (explaining that it is not the court's role to add language to a statute).

C. The potential impacts on other tort laws are connected to damages caps but irrelevant to this Court's review.

Morgan's argument that #150 has more than one subject because it will nullify "a host" of other laws that are unrelated to damages caps, Pet's Op. Br. 18, is incorrect and irrelevant. The laws Morgan claims #150 will nullify all relate to circumstances when an award of damages might be reduced. *See id.* at 18-22 (citing §§ 13-21-102(2), 13-50.5-105, 13-21-111.6, 13-21-111, C.R.S.). Thus, every impact noted is still "necessarily and properly connected" to the removal of damages caps. *In re Title, Ballot Title, Submission Clause for 2011-2012 No. 3*, 2012 CO 25, ¶ 9.

Regardless of that connection, this Court "do[es] not consider the merits of the proposed initiatives nor their validity or efficacy if approved by voters and enacted." *Matter of Titles, Ballot Titles, & Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, & #128*, 2022 CO 37, ¶ 10.[2]

[2] Morgan asserts that the proponents are employing a "tactic . . . aimed at taking a giant leap beyond this Court's holding in *In re Title, Ballot Title and Submission Clause for 2019–2020 #3*, 2019 CO 57," the

II. #150 satisfies the clear title standard.

Morgan's argument that #150 does not have a clear title relies heavily on the argument that the proposed initiative contains multiple subjects (which it does not). *See* Pet's Op. Br. 27-28. Therefore, the Board rests on its single-subject argument, *supra* 1-7; Title Bd. Op. Br. at 6-16, and the argument in its opening brief that the title is not misleading because it "fairly and accurately" describes the initiative, Title Bd. Op. Br. at 17-21; *see In re Title, Ballot Title & Submission Clause for 2009-2010 #45*, 234 P.3d 642, 649 n.3 (Colo. 2010).

CONCLUSION

The Court should affirm the title for Initiative 2023-2024 #150 set by the Title Board.

TABOR repeal case. Pet's Op. Br. at 24. The Title Board did not cite this case in its opening brief, and the proponents cited it only for the proposition that this Court cannot consider the merits of #150 or its future application. *See* Resp.'s Op. Br. 5, 7. A decision that #150 contains a single subject would be well-within existing precedent and would not require novel analysis or an extension of this Court's ballot initiative jurisprudence.

Respectfully submitted this 24th day of April, 2024.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **THE TITLE BOARD'S ANSWER BRIEF** upon all counsel of record by Colorado Courts E-filing (CCE), this 24th day of April, 2024.

/s/ *Leslie Bostwick*