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**SUPREME COURT OF COLORADO**

2 East 14th Avenue  
Denver, CO 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  
2023-2024 #30 (“Concerning Parole Eligibility”)

**Petitioner:** Christina M. Donner

v.

**Respondents:** Steven Ward and Suzanne Taheri

**and**

**Title Board:** Theresa Conley, Jerimiah Barry,  
and Kurt Morrison

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Case Number: 2023SA119

**RESPONDENTS’ OPENING BRIEF**

## 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 **1,995** 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/ Suzanne Taheri  
Suzanne Taheri

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## **STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

1. Whether the Title Board correctly determined that Proposed Initiative 2023-2024 #30 contains a single subject.
2. Whether the Board correctly found and stated the single subject of Proposed Initiative 2023-2024 #30.
3. Whether the Board set a title that clearly and accurately stated the purpose of Proposed Initiative 2023-2024 #30.
4. Whether the phrase “crimes of violence” is a catchphrase that should not have been included in the titles.

## **STATEMENT OF THE CASE**

Proposed Initiative 2023-2024 #30 (“Concerning Eligibility for Parole”) modifies parole eligibility for violent offenders to ensure that repeat offenders who commit and are convicted and sentenced for specified violent crimes after the initiative becomes law serve eighty-five percent of the sentence on a first offense and the full sentence on subsequent offenses before becoming eligible for parole. The initiative makes modifications to §17-22.5-303.3, C.R.S. through repeal and reenactment. The initiative also modifies §17-22.5-403(2.5)(a), C.R.S. through repeal and reenactment.

The Title Board conducted its initial hearing and set titles for Proposed Initiative 2023-2024 #30 on April 19, 2023. Petitioner, Christine M. Donner, filed a Motion for Rehearing alleging that the initiative did not constitute a single subject because the initiative repeals and reenacts the entirety of §17-22.5-303.3, C.R.S. which – in addition to setting the requirements for parole eligibility – includes a provision which allows the Governor to grant early parole to offenders that are covered by the statute. Petitioner also alleged that the Board failed to set clear titles.

The Title Board held a rehearing on April 26, 2023 where it rejected the single subject argument made by Petitioner. After rejecting the Petitioner’s jurisdictional arguments, the Board made modifications to the ballot titles.

Petitioner now challenges title setting based upon the denial of the single subject argument and further asserts that the Title Board failed to set clear titles.

### **SUMMARY OF THE ARGUMENT**

The Title Board correctly found that repeal and reenactment in the manner proposed by Proposed Initiative 2023-2024 #30 does not constitute multiple subjects. The section of the statute concerning the Governor’s authority to grant early parole is properly and necessarily connected to the subject of the initiative,



does not grant any new authority to the Governor, and aligns with the Governor’s current Constitutional authority to commute sentences and grant pardons.

The Titles set by the Board clearly and accurately capture the purpose of the initiative and inform voters regarding the effects of passing the initiative.

## **ARGUMENT**

### **I. Repeal and Reenactment Does Not Create a Separate Subject.**

#### **A. Standard of Review**

In reviewing the Title Board’s single subject decision, the Court “employ[s] all legitimate presumptions in favor of the propriety of the Title Board’s actions.”

*Johnson v. Curry (In re Title, Ballot Title, & Submission Clause for 2015-2016 #132)*, 374 P.3d 460, 464 (2016), citing *In re Title, Ballot Title & Submission Clause for 2011-2012 #3*, 274 P.3d 562, 565 (Colo. 2012) (quoting *In re Title, Ballot Title & Submission Clause for 2009-2010 #45*, 234 P.3d 642, 645 (Colo. 2010)).

The Court “also liberally construe[s] the single subject requirement to ‘avoid unduly restricting the initiative process.’” *Matter of Title, Ballot Title and Submission Clause for 2013–2014 #90*, 328 P.3d 155, 160 (Colo. 2014), (quoting *In re Title, Ballot Title and Submission Clause for 2009-2010 #24*, 218 P.3d 350,

353 (Colo. 2009) ). Therefore, the Court ““only overturn[s] the Title Board’s finding that an initiative contains a single subject in a clear case.”” *In re 2013-2014 #89*, 328 P.3d 172, 176 (Colo. 2014) (quoting *In re Title, Ballot Title, and Submission Clause for 2011-2012 #3*, 274 P.3d 562, 565 (Colo. 2012) and *In re Title, Ballot Title, and Submission Clause for Proposed Initiative 1996 #6*, 917 P.2d 1277, 1280 (Colo. 1996)).

**B. Provisions Must be Related to One Object or Purpose**

“[I]f the initiative tends to effect or to carry out one general object or purpose, it is a single subject under the law.” *In re Title, Ballot Title, Submission Clause, & Summary Adopted April 5, 1995, by Title Bd. Pertaining to a Proposed Initiative Pub. Rights in Waters II*, 898 P.2d 1076, 1080 (Colo.1995). The Title Board need only determine that the initiative “encompasses *related* matters” to establish a single subject. *In re 2013-2014 #89*, 328 P.3d at 177, citing *In re Title, Ballot Title, Submission Clause, & Summary with Regard to a Proposed Petition for an Amendment to the Constitution of the State of Colo. Adding Section 2 to Article VII*, 900 P.2d 104, 113 (Colo.1995) (Scott, J., concurring). The Title Board’s determination that the provisions appear to be connected to the Initiative’s

central focus establishes a single subject. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 258(A)*, 4 P.3d 1094, 1099 (Colo. 2000).

**C. The provisions of Initiative #30 are related to one object or purpose.**

Initiative #30 changes the required amount of a sentence that certain violent offenders must serve before becoming eligible for parole. Multiple offenders must serve a larger percentage of the sentence imposed before they can be paroled.

Initiative #30 accomplishes this change in Colorado law by repealing and reenacting §§ 17-22.5-303.3 and 17-22.5-403(2.5)(a), C.R.S. The Governor's authority to grant early parole in extraordinary mitigating circumstances and the statutory requirements for the minimum amount of the sentence that offenders with multiple convictions must serve prior to reaching parole eligibility are related. Indeed, they are so intertwined that they currently appear together in the existing statute.

In 2019, the Court established a precedent that the repeal of an entire section of law does not create multiple subjects when it determined that an initiative designed to repeal the entirety of Article X, Section 20 of the Colorado Constitution was a single subject. *Hedges v. Schler (In re Title, Ballot Title & Submission Clause for 2019-2020 #3)*, 442 P.3d 867 (Colo. 2019).

Here, Proponents seek to repeal and reenact a statute that contains items that are necessarily and properly connected. In the reenactment, the Governor is not being granted a new right that does not already exist. No change is being made to the section that covers the Governor’s authority. The Title Board clearly and accurately stated the single subject of the proposed initiative as: “concerning parole eligibility for an offender convicted of certain crimes.”

**II. Initiative #30 Does Not Implicate Dangers to be Prevented by Single Subject Requirement.**

As set forth in the Colorado Constitution and affirmed by state statute, the express purpose of the single-subject requirement for proposed voter initiatives is to prevent two “dangers” of multi-subject initiatives: first, it prevents the enactment of combined measures that would fail on their individual merits; second, it protects against fraud and surprise occasioned by the inadvertent passage of a surreptitious provision coiled up in the folds of a complex initiative. Colo. Const. art. 5, § 1(5.5); Colo. Rev. Stat. Ann. § 1-40-106.5. Initiative #30 does not trigger either of the two “dangers” of multiple-subject initiatives.

First, Initiative #30 does not include “incongruous subjects in the same measure” with “no necessary or proper connection, for the purpose of enlisting in

support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits[.]” *Hedges v. Schler (In re Title, Ballot Title & Submission Clause for 2019-2020 #3)*, 442 P.3d 8128, 870 (Colo. 2019), citing *In re Title, Ballot Title & Submission Clause for 2015-2016 #73*, 369 P.3d 565, 568 (Colo. 2016); and C.R.S. § 1-40-106.5(1)(e)(I). An “initiative will be held to violate the single subject requirement when it relates to more than one subject and has at least two distinct and separate purposes.” *Id.*

Initiative #30 has the singular purpose of ensuring that violent offenders serve a longer time in prison and therefore away from society prior to becoming eligible for parole where they have less supervision. In crafting the original provisions of the statute, the General Assembly clearly understood and acknowledged the Governor’s authority to modify sentences. Therefore, the same statute that addresses the length of time that must be served before becoming eligible for parole also recognizes the Governor’s right to exercise one form of reprieve: granting early parole.

Second, Initiative #30 will not lead to “voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision ‘coiled up in the folds’ of a complex initiative” because there are no embedded provisions that would lead to

voter surprise or fraud. *In re 2011-2012 No. 45*, 274 P.3d 576, 582 (Colo. 2012).

Proponents are merely reenacting that provision along with the changes to minimum time served for certain offenders.

Even if the Governor's authority was a central provision of Initiative #30, it is necessarily connected to the changes being made. No voter would ever be surprised to know that the Colorado Governor has the authority to modify a sentence. That authority is enshrined in Article IV, Section 7 of the Colorado Constitution. The provision in §17-22.5-303.3(5) does not change the Governor's authority; it merely clarifies it to note that the power of reprieve, commutation, and pardon also includes the power to move an offender from imprisonment to parole.

Initiative #30 does not change one word in the existing statute with regard to the Governor's authority to grant early parole. If only for that reason alone, the single subject challenge must be rejected.

### **III. The Title Clearly and Accurately Describes the Central Features.**

#### **A. Standard of Review**

“The Title Board is vested with considerable discretion in setting the title and the ballot title and submission clause.” *In re Title, Ballot Title & Submission Clause for 2015-2016 #156*, 415 P.3d 151, 153 (Colo. 2016). When reviewing a

title for clarity and accuracy, the Court will only reverse the Title Board’s decision if the title is “insufficient, unfair, or misleading.” *In re Initiative for 2009-2010 #45*, 234 P.3d 642, 648 (Colo. 2010). Accordingly, the Court “employ[s] all legitimate presumptions in favor of the propriety of the Title Board’s actions.” *In re 2015-2016 #156*, 415 P.3d at 153 (quoting *In re 2013–2014 #89*, 328 P.3d at 176 and *In re 2009–2010 #45*, 234 P.3d at 645).

**B. The Title Clearly, Accurately, and Fairly Describes Initiative #30 and Incorporates All Central Features.**

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), citing *In re Proposed Petition on Campaign and Political Fin.*, 877 P.2d 311, 313 (Colo. 1994). The Title Board must “capture, in short form, the proposal in plain, understandable, accurate language enabling informed voter choice in pursuit of the initiative rights of Colorado citizens.” *In re Title, Ballot Title & Submission Clause for 1999-2000 #29*, 972 P.2d 257, 266 (Colo. 1999). A title 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 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)).

Here, the Title captures every central feature of Initiative #128: (1) requiring first-time offenders convicted of certain crimes on or after January 1, 2025 to serve eighty-five percent of the sentence imposed before becoming eligible for parole; (2) requiring offenders with two previous convictions who are convicted of certain crimes on or after January 1, 2025 to serve the full sentence imposed before beginning to serve parole. The language closely tracks the initiative. There is no provision covered in the initiative that are not also covered in the Title.

The title clearly, accurately, and fairly describes Initiative #30, incorporates all of its central features, and voters can understand the meaning of a “yes” or “no” vote.

## CONCLUSION

For all these reasons, Respondents respectfully request that the Court affirm the actions of the Title Board for Initiative #30.

Dated: May 16, 2022

Respectfully submitted,  
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## CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of May, 2023, a true and correct copy of the **RESPONDENTS' OPENING BRIEF** was served via the Colorado Court's E-Filing System to the following:

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