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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	▲ COURT USE ONLY ▲
Attorney for Respondents: Suzanne M. Taheri, #23411 WEST GROUP LAW & POLICY 6501 E. Belleview Ave, Suite 375 Englewood, CO 80111 Phone Number: (303) 263-0844 Email: st@westglp.com	Case Number: 2023SA119

RESPONDENTS' ANSWER 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 **1,281** 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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Respondents Steven Ward and Suzanne Taheri, registered electors of the State of Colorado and the designated representatives of the proponents of Initiative 2023-2024 #30 ("Initiative #30), through counsel respectfully submit their Answer Brief in support of the title, ballot title, and submission clause (the "Title") set by the Title Board for Initiative #30.

ARGUMENT

I. Initiative #30 is a single subject, and the Board had the authority to set titles.

A. Parole eligibility and the Governor's authority to grant early parole are properly and necessarily connected.

Petitioner argues that Initiative #30 will force voters to choose between making parole more difficult to obtain by adjusting the amount of the sentence that must be served before becoming eligible and, "readopt[ing] a law that gives the governor the ability to make parole decisions for these same individuals…" *See* Petitioner's Opening Brief, p. 9. This argument would fail even if Initiative #30 changed the governor's parole authority in any way because the governor's authority to grant early parole *is* properly and necessarily connected to the subject of sentencing of offenders.

However, Petitioner's argument is further weakened because Initiative #30 does not change the governor's existing authority. The repeal and reenactment of

the statutory provision regarding the governor's parole authority makes no change to the status quo regarding sentencing of offenders or the amount of a sentence that must be served before becoming eligible for parole.

B. Repeal and reenact does not frustrate the single subject requirement.

In support of her single subject claim, Petitioner cites the very same decision that Respondents cited to oppose it. In *Hedges v. Schler (In re Title, Ballot Title & Submission Clause for 2019-2020 #3)*, 2019 CO 57, 442 P.3d 867, the Court ruled that the full repeal of Colo. Const. art X, § 20 ("TABOR") was a single subject. Notably, the Court overturned the Title Board's single subject determination in that case.

Petitioners omitted the following sentence of the paragraph they cited which applies in Initiative #30 just the same as it did in 2019-2020 #3: "This concern is not present in a case like this, however, when voters are asked to vote yes or no on a constitutional provision as a whole. *Id*, ¶ 26.

As a repeal and reenact, Initiative #30 repeals all of C.R.S. § 17-22.5-303.3 and inserts new provisions for offenders who are convicted and sentenced for crimes covered by the statute on or after January 1, 2025. It does not alter or modify the governor's authority to grant parole for any crime listed in the measure.

The Title Board correctly determined that the only substantive effect of Initiative #30 was to change the minimum amount of the sentence that must be served for certain offenders before becoming eligible for parole which is why the Title Board chose to close the title with the clause, "and continuing the governor's authority to grant parole for any such offender before the eligibility date if extraordinary mitigating circumstances exist?" R. at 9 [emphasis added].

C. "Logrolling" does not apply.

The purpose of the single subject requirement is to prevent proponents of an initiative from joining disparate concepts into a single measure in order to gather votes. However, Petitioner acknowledges that even if – contrary to the Title Board's decision and the facts – Initiative #30 constitutes multiple subjects, those subjects would unite voters with differing opinions in opposition to Initiative #30 rather than for it.

Petitioner quotes the Title Board chair who stated that, "such voters would want to vote 'yes' for the first portion of the measure and 'no' on the second." Petitioner's Opening Brief, p. 9. This distinction is important because the legislature declares, and this Court has upheld the principle that the single subject requirement exists: "(I) To forbid the treatment of incongruous subjects in the same measure, especially the practice of putting together in one measure subjects

having 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[.]" C.R.S. § 1-40-106.5(1)(e)(I).

Petitioner's logrolling argument defies logic. A voter would not vote "yes" on a measure they would have otherwise voted "no" because of a reenactment clause. A "yes" vote creates new law, a "no" vote leaves the status quo which includes the existing provision granting the Governor's authority. If the voter only liked the provision related to the Governor's authority they will vote "no" and leave the authority intact.

II. The title set by the Board is clear.

A. The definition of "Crime of Violence" is established as it relates to existing statute.

Initiative #30 modifies C.R.S. § 17-22.5-303.3. While neither the existing statute nor any provision of Initiative #30 defines "crime of violence," the Court has already adequately clarified what constitutes a "crime of violence" for the purposes of the existing statute in *Busch v. Gunter*, 870 P.2d 586 (Colo. App. 1993). As Petitioner points out, the definition previously applied by the court pointed to C.R.S. § 16-11-309 which was subsequently recodified into C.R.S. § 18-1.3-406(2) which states:

(a)(I) "Crime of violence" means any of the crimes specified in subparagraph (II) of this paragraph (a) committed, conspired to be committed, or attempted to be committed by a person during which, or in the immediate flight therefrom, the person:
(A) Used, or possessed and threatened the use of, a deadly weapon; or
(B) Caused serious bodily injury or death to any other person except another participant.

(II) Subparagraph (I) of this paragraph (a) applies to the following crimes:
(A) Any crime against an at-risk adult or at-risk juvenile;
(B) Murder;
(C) First or second degree assault;
(D) Kidnapping;
(E) A sexual offense pursuant to part 4 of article 3 of this title;
(F) Aggravated robbery;
(G) First degree arson;
(H) First degree burglary;
(I) Escape;
(J) Criminal extortion; or
(K) First or second degree unlawful termination of pregnancy.

(b)(I) "Crime of violence" also means any unlawful sexual offense in which the defendant caused bodily injury to the victim or in which the defendant used threat, intimidation, or force against the victim. For purposes of this subparagraph (I), "unlawful sexual offense" shall have the same meaning as set forth in section 18-3-411 (1), and "bodily injury" shall have the same meaning as set forth in section 18-1-901 (3)(c).

(II) The provisions of subparagraph (I) of this paragraph (b) shall apply only to felony unlawful sexual offenses.

(c) As used in this section, "at-risk adult" has the same meaning as set forth in section 18-6.5-102 (2), and "at-risk juvenile" has the same meaning as set forth in section 18-6.5-102 (4).

Because the Court has already ruled on what crimes are considered a "crime of violence" for the purpose of C.R.S. § 17-22.5-303.3 and Initiative #30 does not propose to change that existing definition, the title as set by the Board is clear.

The term "crime of violence" is from the statute and caselaw. It is a descriptive word of the type of crime to inform voters of the general category and satisfies the common understanding of the voter. In contrast, "Catch phrases are terms that work in favor of a proposal without contributing to voter understanding; they trigger a favorable response to the proposal based not on its content but on its wording." *In re Title & Submission Clause for 2015-2016 #63*, 2016 CO 34, ¶ 24, 370 P.3d 628, 634.

CONCLUSION

Initiative #30 is a single subject. The title set by the Board is sufficiently clear to inform voters of the purpose of the initiative and the consequences of enacting it. The Court should affirm the decision of the Title Board.

Dated: June 14, 2022

Respectfully submitted,
s/Suzanne Taheri
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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of June, 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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