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| <p>SUPREME COURT, STATE OF COLORADO</p> <p>2 East 14th Avenue<br/>Denver, Colorado 80203</p>   | <p>DATE FILED: April 29, 2024 7:04 PM</p> |
| <p>ORIGINAL PROCEEDING PURSUANT TO C.R.S.<br/>§ 1-40-107(2)</p> <p><b>Petitioners:</b> Kevin Grantham and Cheri Jahn</p> <p>v.</p> <p><b>Respondent:</b> Jessica Goad</p> <p>and</p> <p><b>Colorado Ballot Title Setting Board:</b><br/>Theresa Conley, Jason Gelender, and Kurt Morrison</p>  | <p>▲ COURT USE ONLY ▲</p>                 |
| <p><b>Attorneys for Petitioner:</b></p> <p>Jason R. Dunn, #33011<br/>David B. Meschke, #47728<br/>Neil S. Sandhu, #56600<br/>Denver Donchez, #56761<br/>BROWNSTEIN HYATT FARBER SCHRECK LLP<br/>675 15th St, Suite 2900<br/>Denver, CO 80202<br/>Tel: 303.223.1100<br/>Fax: 303.223.1111<br/>jdunn@bhfs.com; dmeschke@bhfs.com;<br/>nsandu@bhfs.com; and ddonchez@bhfs.com</p> | <p>Case Number:</p>                       |
| <p style="text-align: center;"><b>PETITION FOR REVIEW OF FINAL ACTION OF<br/>THE BALLOT TITLE SETTING BOARD CONCERNING<br/>PROPOSED INITIATIVE 2023-2024 #291</b></p>  |   |

Pursuant to section 1-40-107(2), C.R.S., Kevin Grantham and Cheri Jahn (collectively “Petitioners”), through undersigned counsel,

respectfully petition this Court to review the decisions by the Colorado Ballot Title Setting Board (“Title Board”) that it lacks jurisdiction to set title for Proposed Initiative 2023-2024 #291 (“Initiative #291”)<sup>1</sup> and deny Petitioners’ motion for rehearing regarding language in the title set at the initial Title Board hearing.

### **I. ACTION OF THE TITLE BOARD**

Petitioners, who are the proponents of and designated representatives for Initiative #291, filed the measure with the Title Board on April 5, 2024. The Title Board conducted its initial public hearing for Initiative #291 on April 17, 2024, where the Title Board, by a vote of 2-1, determined that Initiative #291 had a single subject and set a title. Title Board members Jason Gelender and Kurt Morrison voted in favor of setting title, with Title Board member Theresa Conley opposed.<sup>2</sup>

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<sup>1</sup> Initiative #291 is similar to Proposed Initiatives 2023-2024 #292 and #293. Petitioners are appealing the Title Board’s decision that it lacks jurisdiction to set title as to all three measures.

<sup>2</sup> Ms. Conley originally voted in favor of Initiative #291 containing a single subject but later changed her vote at the end of Initiative #291’s initial hearing.

Objector Jessica Goad subsequently filed a timely Motion for Rehearing on April 24, 2024, challenging the Title Board's determination that it had jurisdiction to set a title on the basis that the measure contains several separate and distinct subjects in violation of the single-subject requirement in Article V, Section 1(5.5) of the Colorado Constitution and C.R.S. § 1-40-106.5(1)(e). Objector Goad also argued that the title set was misleading and did not correctly and fairly express the measure's true intent and meaning. Petitioners also filed a timely motion for rehearing on April 24, 2024, challenging language in the title adopted at the initial hearing.

The Title Board considered both motions at a rehearing on April 25, 2024. This time, however, the Title Board reversed itself and granted Objector Goad's motion for rehearing. Specifically, two Title Board members found that Initiative #291 was impermissibly broad and thus contains multiple subjects, and therefore the Board lacks jurisdiction to set title. Mr. Gelender was the dissenting Title Board member. The Title board then denied Petitioners' motion for rehearing

on clear title as moot. Petitioners now seek review of Title Board's actions under C.R.S. § 1-40-107(2).

## **II. ISSUES PRESENTED FOR REVIEW**

- A. Whether the Title Board erred in finding that Initiative #291 contains multiple subjects.
- B. Whether the Title Board erred in denying Petitioners' motion for rehearing because the title set at the initial hearing for Initiative #291 contained several flaws that prevented the setting of a clear title.

## **III. SUPPORTING DOCUMENTATION**

As required by section 1-40-107(2), attached are certified copies of:

- (1) the final copy of Initiative #291 as submitted to Title Board;
- (2) the determinations and final action by Title Board; (3) the Motions for Rehearing filed by Objector Goad and Petitioners; and (4) the initial fiscal summary.

## **IV. RELIEF REQUESTED**

Petitioner respectfully requests that the Court reverse the Title Board's decision to grant Objector Goad's Motion for Rehearing, hold that the Title Board has jurisdiction to set title for Initiative #291

because the measure contains a single subject, and remand Initiative #291 to the Title Board to set a title consistent with the arguments Petitioners made in their motion for rehearing.

Respectfully submitted on April 29, 2024.

BROWNSTEIN HYATT FARBER SCHRECK LLP

/s/ Jason R. Dunn

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*Attorneys for Petitioners Kevin Grantham and Cheri Jahn*

## CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2024, I electronically filed a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF THE BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2023-2024 #291** with the clerk of Court via the Colorado Courts E-Filing system which will send notification of such filing and service upon the following:

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DATE FILED: April 29, 2024 7:04 PM



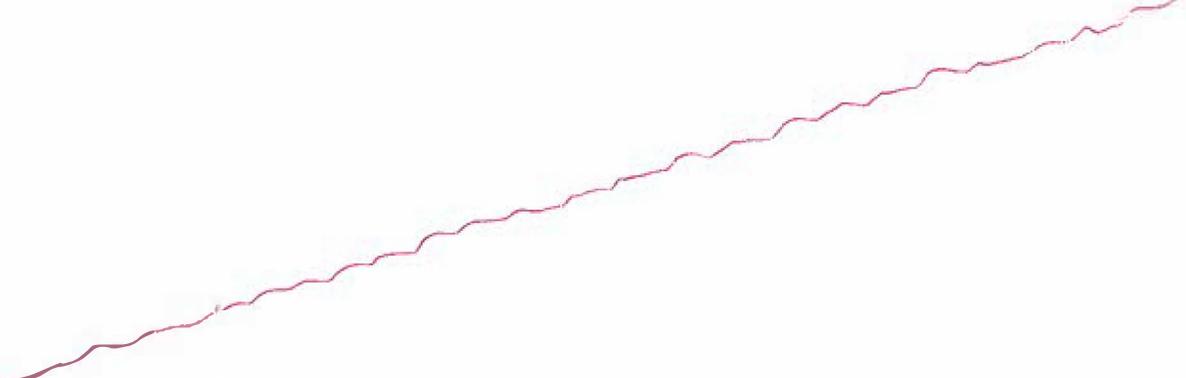
# STATE OF COLORADO

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 summary, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2023-2024 #291 'Local Control Over Land Use' ".....



.....**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 26<sup>th</sup> day of April, 2024.

*Jena Griswold*

SECRETARY OF STATE





2023-2024 # 291 – Final with Technical Corrections

*Be it Enacted by the People of the State of Colorado:*

**SECTION 1.** In the Constitution of the state of Colorado Article XVIII, **add** Section 17, as follows:

**Section 17. Local control of land use regulations or decisions.** (1) IN RECOGNITION OF THE BENEFITS OF LOCAL CONTROL OVER LAND USE REGULATIONS OR DECISIONS WITH LOCALIZED IMPACTS, ESPECIALLY FOR LAND USE DECISIONS WITH EFFECTS ON QUALITY OF LIFE, HOUSING, ENERGY, COMMERCIAL AND INDUSTRIAL DEVELOPMENT, AND PUBLIC HEALTH AND SAFETY, AND SO THAT LOCAL GOVERNMENTS CAN CHOOSE EITHER STRICTER OR MORE RELAXED APPROACHES DEPENDING ON THEIR LOCAL NEEDS, THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT LOCAL GOVERNMENTS SHALL HAVE PLENARY AND EXCLUSIVE CONTROL OVER LAND USE REGULATIONS OR DECISIONS WITHIN THEIR JURISDICTIONS, SUCH THAT THE STATE GOVERNMENT MAY NOT SPECIFY MORE OR LESS RESTRICTIVE LAND USE REQUIREMENTS THAN THE LOCAL GOVERNMENT SPECIFIES, AND IF SUCH STATE GOVERNMENT DOES SPECIFY A MORE RESTRICTIVE REQUIREMENT IN CONFLICT WITH A LOCAL GOVERNMENT’S LAND USE REGULATIONS OR DECISIONS, SUCH REQUIREMENT WILL HAVE NO EFFECT. THE PEOPLE OF THE STATE OF COLORADO FURTHER FIND AND DECLARE THAT LOCAL LAND USE REGULATIONS OR DECISIONS ARE CATEGORICALLY A MATTER OF LOCAL CONCERN AND THAT LOCAL GOVERNMENTS HAVE THE ABILITY TO MAKE EVIDENCE-BASED DETERMINATIONS WITHOUT INTERFERENCE BY STATE GOVERNMENT AND WITHOUT REGARD TO CONFLICT WITH STATE STATUTES, REGULATIONS, OR DECISIONS.

(2) AS USED IN THIS SECTION 17, UNLESS CONTEXT OTHERWISE REQUIRES:

(a) “LAND USE REGULATION OR DECISION” MEANS ANY ZONING LAW OF GENERAL APPLICABILITY ADOPTED BY A LOCAL GOVERNMENT OR ANY ZONING OR DEVELOPMENT REGULATION THAT HAS BEEN ADOPTED FOR A PARTICULAR PARCEL, ANY APPROVED PLAN OR PERMIT DESCRIBING WITH REASONABLE CERTAINTY THE TYPE AND INTENSITY OF LAND USE FOR A SPECIFIC PARCEL OR PARCELS OF PROPERTY ADOPTED PURSUANT TO SUCH ZONING LAW OR ZONING OR DEVELOPMENT REGULATION, OR ANY DECISION TO GRANT OR DENY A USE OR SITING PERMIT. AN APPROVED PLAN OR PERMIT INCLUDES, BUT IS NOT LIMITED TO, AN APPROVED PLANNED UNIT DEVELOPMENT PLAN, SUBDIVISION PLAT, SPECIALLY PLANNED AREA, PLANNED BUILDING GROUP, GENERAL SUBMISSION PLAN, PRELIMINARY OR GENERAL DEVELOPMENT PLAN, CONDITIONAL OR SPECIAL USE PLAN, DEVELOPMENT AGREEMENT, VARIANCE, OR ANY OTHER LAND USE APPROVAL DESIGNATION AS MAY BE UTILIZED BY A LOCAL GOVERNMENT.

(b) “LOCAL GOVERNMENT” MEANS ANY COUNTY, CITY AND COUNTY, CITY, OR TOWN, WHETHER STATUTORY OR HOME RULE, INCLUDING WHEN A COUNTY, CITY AND COUNTY, CITY, OR TOWN ACTS THROUGH ITS GOVERNING BODY OR ANY BOARD, COMMISSION, OR AGENCY THEREOF, HAVING ULTIMATE AUTHORITY OVER A LAND USE REGULATION OR DECISION.

(c) “STATE GOVERNMENT” OR “STATE GOVERNMENT ENTITY” MEANS THE STATE OF COLORADO, INCLUDING ITS REGULATORY AGENCIES OR DIVISIONS THEREOF WITH STATEWIDE JURISDICTION.

(3) LOCAL GOVERNMENTS SHALL HAVE PLENARY AND EXCLUSIVE CONTROL OVER LAND USE REGULATIONS OR DECISION WITHIN THEIR JURISDICTIONS, INCLUDING, WITHOUT LIMITATION, REGULATION OF THE SITING, LOCATION OF DEVELOPMENTS ON, AND TYPES AND INTENSITIES OF USES OF LAND WITHIN THEIR JURISDICTIONS. A LAND USE REGULATION OR DECISION SHALL HAVE PRIMACY AND PRESUMPTIVE EFFECT OVER A STATE GOVERNMENT ENTITY'S CONFLICTING DETERMINATION, RULE, REGULATION, APPROVAL, PERMIT, OR STATUTE REGARDING THE SAME SITING, LOCATION, AND OPERATIONS OF DEVELOPMENT, OR TYPE OR INTENSITY OF USE OF LAND. STATE GOVERNMENT SHALL TAKE NO ACTION ADVERSE TO A LOCAL GOVERNMENT IN RESPONSE TO A LOCAL GOVERNMENT'S DECISION OR AUTHORITY UNDER THIS SECTION.

(4) IF A LOCAL GOVERNMENT APPROVES A LAND USE REGULATION OR DECISION APPLICABLE TO A SPECIFIC PARCEL OR PARCELS OF PROPERTY, NO STATE GOVERNMENT ENTITY MAY WITHHOLD OTHER PERMITS OR APPROVALS THAT MAY BE NECESSARY FOR THE CONTEMPLATED SITING, LOCATION, AND OPERATIONS OF DEVELOPMENT ON, OR TYPE AND INTENSITY OF USE OF SUCH PROPERTY.

(5) THIS SECTION IS SELF-EXECUTING AND SHALL SUPERSEDE CONFLICTING STATE CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS, TO THE EXTENT THAT SUCH PROVISIONS ADDRESS LAND USE AUTHORITY.

**SECTION 2. Effective date.**

This initiative shall become effective and apply to conduct occurring on or after the earlier of the official declaration of the vote hereon by proclamation of the governor or thirty days after the vote has been canvassed, pursuant to section 1 (4) of article V of the state constitution.

## **Ballot Title Setting Board**

### **Proposed Initiative 2023-2024 #291<sup>1</sup>**

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution granting local governments primary regulatory authority over public and private land within their jurisdictions, and, in connection therewith, granting a local government complete and exclusive control over zoning laws, regulations, and land use decisions within its jurisdiction, including energy production, roads and bridges, and environmental regulations, providing that local laws, regulations, and decisions override any conflicting state land use law, regulation, or decision; and prohibiting the state from taking adverse action against a local government for its land use decisions or withholding any state required approval.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution granting local governments primary regulatory authority over public and private land within their jurisdictions, and, in connection therewith, granting a local government complete and exclusive control over zoning laws, regulations, and land use decisions within its jurisdiction, including energy production, roads and bridges, and environmental regulations, providing that local laws, regulations, and decisions override any conflicting state land use law, regulation, or decision; and prohibiting the state from taking adverse action against a local government for its land use decisions or withholding any state required approval?

*Hearing April 17, 2024:*

*Single subject approved; staff draft amended; titles set.*

*The Board determined that the proposed initiative requires the addition of language to the Colorado Constitution. The requirement for approval by fifty-five percent of the votes cast applies to this initiative.*

*The Board made technical corrections to the text of the initiative.*

*Board members: Theresa Conley, Jason Gelender, Kurt Morrison*

*Hearing adjourned 10:10 A.M.*

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<sup>1</sup> Unofficially captioned “**Local Control Over Land Use**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.



## **Ballot Title Setting Board**

### **Proposed Initiative 2023-2024 #291<sup>1</sup>**

*Hearing April 17, 2024:*

*Single subject approved; staff draft amended; titles set.*

*The Board determined that the proposed initiative requires the addition of language to the Colorado Constitution. The requirement for approval by fifty-five percent of the votes cast applies to this initiative.*

*The Board made technical corrections to the text of the initiative.*

*Board members: Theresa Conley, Jason Gelender, Kurt Morrison*

*Hearing adjourned 10:10 A.M.*

*Rehearing April 25, 2024:*

*Motion for rehearing (Goad) granted in its entirety. The Board lacks jurisdiction to set title because the measure has multiple subjects (2-1, Gelender).*

*Motion for rehearing (Proponents) denied in its entirety (3-0).*

*Board members: Theresa Conley, Kurt Morrison, Jason Gelender*

*Hearing adjourned: 10:49 A.M.*

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<sup>1</sup> Unofficially captioned “**Local Control Over Land Use**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.



**BEFORE THE COLORADO BALLOT TITLE SETTING BOARD**

In re Proposed Initiative for 2023-2024 #291  
(Local Control Over Land Use)

Jessica Goad,  
Objector

v.

Kevin Grantham and Cheri Jahn,  
Designated Representatives of the Proponents

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**MOTION FOR REHEARING RE PROPOSED INITIATIVE FOR 2023-2024 #291**

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Jessica Goad, a registered elector of the State of Colorado, respectfully submits this Motion for Rehearing regarding Proposed Initiative for 2023-2024 #291 (Local Control Over Land Use):

At its hearing on April 17, 2024, the Title Board set the following ballot title and submission clause for Proposed Initiative for 2023-2024 #291:

An amendment to the Colorado constitution granting local governments primary regulatory authority over public and private land within their jurisdictions, and, in connection therewith, granting a local government complete and exclusive control over zoning laws, regulations, and land use decisions within its jurisdiction, including energy production, roads and bridges, and environmental regulations, providing that local laws, regulations, and decisions override any conflicting state land use law, regulation, or decision; and prohibiting the state from taking adverse action against a local government for its land use decisions or withholding any state required approval.

In doing so, the Board determined that the Initiative contained a single subject as required by Colo. Const. art. V, §1(5.5). Movant respectfully submits that this determination was in error for the following reasons:

## I. The Single Subject Requirement.

The Colorado Supreme Court has noted on frequent occasion that the “single subject” requirement embodied in Colo. Const. art. V, §1(5.5) is directed to avoiding two “dangers” in the ballot initiative process. “First, combining subjects with no necessary or proper connection for the purpose of garnering support for the initiative from various factions – that may have different or even conflicting interests – could lead to the enactment of measures that would fail on their own merits” (often referred to as “logrolling”). *In re Title, Ballot Title & Submission Clause for 2011-2012 #3*, 2012 CO 25, ¶11, 274 P.3d 562, 566 (Colo. 2012). “Second, the single subject rule helps avoid ‘voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision coiled up in the folds’ of a complex initiative.” *Id.*

In this context, the Supreme Court has noted that “mere implementation or enforcement details directly tied to the initiative’s single subject will not, in and of themselves, constitute a separate subject.” *In re Titles, Ballot Titles and Submission Clauses for Proposed Initiatives 2021-2022 #67, 115, & #128*, 2022 CO 37, ¶14, 526 P.3d 927, 930 (Colo. 2022). “However, attempting to ‘characterize an initiative under some general theme will not save [it] from violating the single-subject rule if the initiative contains multiple subjects.’” *Id.*, quoting *In re Title, Ballot Title & Submission Clause for 2019-2020 #315*, 2020 CO 61, ¶17, 500 P.3d 363, 367 (Colo. 2020). In *In re 2021-2022 #67, 115, & #128*, the proposed initiatives would have authorized both (1) the sale of wine in grocery stores and (2) home delivery of alcoholic beverages – under the general theme of “expanding the retail sale of alcohol beverages;” the Supreme Court – noting that “some voters might well support home delivery of alcohol while preferring to keep wine out of grocery stores, and others might feel precisely the opposite” – concluded that “[t]hese are simply two different subjects” and therefore reversed the Title Board and struck the titles. *Id.* at ¶23, 932.

## II. The Multiple Subjects in Proposed Initiative for 2023-2024 #291 (“Local Control Over Land Use”).

Proposed Initiative #291 poses precisely the “single subject” trap noted above: (1) labelling the initiative with a broad “general theme” – “local control over land use regulations or decisions” – while (2) scooping multiple distinct subjects within its scope. Importantly, the multiple subjects are not readily evident in the text or title of this initiative – thus the concern with “surreptitious provision[s] coiled up in the folds” – and, if fleshed out, become an absolute banquet of “logrolling.”

This problem did not escape the Office of Legislative Legal Services and the Legislative Council Staff when they analyzed the measure and prepared (and presented to the Proponents)

their Review & Comment Memorandum.<sup>1</sup> Substantive comment #10 identifies at least seven distinct policy areas that would be directly impacted by the initiative, and inquired whether it was the Proponents' intent to supersede state authority – by granting “local governments” “plenary and exclusive control over land use regulations and decisions” – in each of those policy arenas. The responses were generally affirmative – though noting, despite the clear grant of “plenary and *exclusive* control” to local governments, that there should only be an issue in the event of a conflict. No substantive changes were made to the text of the Initiative to alter this language in the wake of the Review & Comment session.

Similarly, the Fiscal Summary prepared by the Legislative Council Staff noted that “exclusive control” was being granted to local governments as to “land use within their jurisdictions” – thus impacting multiple areas currently subject to state regulation, including specifically “oil and gas and mining operations, alcohol beverage sales, water operations, and the management of state highways, lands and buildings in local jurisdictions.”<sup>2</sup>

At the initial hearing on Proposed Initiative 291, there was no real dispute that the initiative would grant “plenary and exclusive control” over “land use regulations and decisions” – including explicitly zoning, development regulations, approved plans or permits, siting permits, development agreements, “or any other land use approval designation as may be utilized by a local government” – with regard at least to (1) oil and gas exploration and operations (including set-backs, number of wells allowed, road construction, refineries, even complete operational bans); (2) mining operations; (3) location and operating restrictions on the sale of alcoholic beverages; (4) operations and locations of retail marijuana businesses and natural medicine healing centers; (5) “water operations” – to include well locations, irrigation ditches, reservoir locations and management, drainage, wastewater disposal, and flood control; (6) use of state lands (agriculture, parks and recreation, natural resource extraction); (7) state buildings; (8) location and construction of state roads, highways, and bridges; (9) location, access requirements, and zoning for hospitals, (10) location and construction of airports, (11) administration of federal lands, and (12) administration and regulation of tax-credit-backed conservation easements. There is no suggestion that this list is exhaustive.

Perhaps there is a method by which the structure of Colorado's core governmental processes can be disassembled and restructured in the fashion proposed by this initiative – encompassing the myriad “subjects” that such an “undoing” and “restructure” would impact. But that process is not by citizen initiative – which is constitutionally subject to and limited by the requirement that a single initiative may only address a “single subject.” Colo. Const. art. V, §1(5.5).

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<sup>1</sup> A copy of the Review & Comment Memorandum for this Initiative is attached as Exhibit 1.

<sup>2</sup> A copy of the Fiscal Summary for this Initiative is attached as Exhibit 2.

III. The Ballot Title and Submission Clause are Misleading and Do Not Correctly and Fairly Express the Initiative's True Intent and Meaning.

The title of the Initiative is misleading and does not correctly and fairly express the initiative's true intent and meaning. Section 1-40-106(3)(b), C.R.S. provides:

In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a "yes" or "no" vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly express the true intent and meaning thereof, together with the ballot title and submission clause. . . .

Titles and submission clauses 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 Title, Ballot Title & Submission Clause for Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 242 (Colo. 1990). The purpose of reviewing an initiative title for clarity parallels that of the single-subject requirement: voter protection through reasonably ascertainable expression of the initiative's purpose. See *id.*

The Title for Initiative #291 does not apprise voters of the expansive reach of the measure, and how it changes the status quo with regard to all of the enumerated subjects identified above. Here, the title for Initiative #291 is one for which the general understanding of the effect of a "yes" or "no" vote will be unclear. See generally 1-40-106(3)(b). As a result, the title for Initiative #291 does not enable voters to make an informed choice because it does not correctly and fairly express its true intent and meaning.

Respectfully submitted April 24, 2024.

/s/ Martha M. Tierney

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 24th day of April 2024, a true and correct copy of **MOTION FOR REHEARING ON PROPOSED INITIATIVE 2023-2024 #291** was filed and served on Proponents Kevin Grantham and Cheri Jahn, via email to their counsel of record as follows:

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Attorneys for Proponents Kevin Grantham and Cheri Jahn

/s/ Martha M. Tierney

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COLORADO TITLE SETTING BOARD

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IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE  
FOR INITIATIVE 2023-2024 #291

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**MOTION FOR REHEARING – INITIATIVE #291**

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On behalf of Proponents Kevin Grantham and Cheri Jahn, registered electors of the State of Colorado and designated representatives of Proposed Ballot Initiative 2023-2024 #291, undersigned counsel hereby submit this Motion for Rehearing pursuant to C.R.S. § 1-40-107, and as grounds therefore states as follows:

**I. Introduction**

Initiative #291 is a nonpartisan measure brought by the Proponents, who are former Colorado state senators. They bring this measure to sustain and augment local control over land use regulations and decisions. Initiative #291’s central purpose is to empower local governance over land use.

The Title Board heard Initiative #291 on April 17, 2024, where it found that the measure contains a single subject. The Title Board set Initiative #291’s title as follows:

An amendment to the Colorado constitution granting local governments primary regulatory authority over public and private land within their jurisdictions, and, in connection therewith, granting a local government complete and exclusive control over zoning laws, regulations, and land use decisions within its jurisdiction, including energy production, roads and bridges, and environmental regulations, providing that local laws, regulations, and decisions override any conflicting state land use law, regulation, or decision; and prohibiting the state from taking adverse action against a local government for its land use decisions or withholding any state required approval.

**II. Argument****a. Initiative #291’s Title Must Be Amended to Comply with the Clear Title Requirements.**

The clear title standard requires that the title “allow voters, whether or not they are familiar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose the proposal.” *In re Title, Ballot Title and Submission Clause for 2015-2016 #73*, 369 P.3d 565, 568 (Colo. 2016). Colorado law requires that the Title Board consider the confusion that may arise from a misleading title and to set a title that “correctly and fairly express[es] the true intent and meaning” of a measure. *Id.* (quoting C.R.S. § 1-40-106(3)(b)).

The Title Board must set a title that is “sufficiently clear and brief for the voters to understand the principal features of what is being proposed.” *In re Title, Ballot and Submission Clause, and Summary for 1999-2000 No. 258(A)*, 4 P.3d 1094, 1098 (Colo. 2000).

In order to set a clear title, the following changes must be made to the title adopted by the Title Board at the April 17, 2024 hearing:

1. The Inclusion of a Non-Exhaustive List of Covered Topics Will Sow Confusion.

The title adopted at the April 17, 2024 hearing highlights several categories covered by “zoning laws, regulations, and land use decisions,” including “energy production, roads and bridges, and environmental regulations.” While “zoning laws, regulations, and land use decisions” cover a range of land use activities, the topics highlighted in the title provide an unrepresentative sampling that will lead to voter confusion.

A title must fairly reflect “the proposed initiative such that voters will not be misled into supporting or opposing the initiative because of the words employed by the Title Board.” *Matter of Title, Ballot Title & Submission Clause for 2015-2016 #73*, 2016 CO 24, ¶ 24, 369 P.3d 565, 569. As drafted, the title will mislead voters that the initiative only includes land use regulations and decisions related to those activities listed in the title, or that these topics are emphasized over other land use decisions for some other reason not specified in the measure.

Indeed, “land use decisions” might include such topics as affordable housing, mining, conservation setbacks, and siting of renewable energy projects. In fact, affordable housing and occupancy limits is a hot button topic that is the subject of several recent bills introduced in the General Assembly, including House Bill 24-1007 that was recently signed by the Governor. Moreover, the definition of “land use regulation or decision” is descriptive enough to provide voters with a comprehensive idea of what categories may be implicated by the measure. Thus, the value of providing a non-exhaustive sampling of specific examples that could *potentially* be included under the measure’s purview is outweighed by the likelihood of misleading voters and causing voter confusion.

To balance brevity with the requirement that a title accurately and not misleadingly describe the measure to the public, the non-exhaustive list of land use decisions discussing “energy production, roads and bridges, and environmental regulations” must be removed from the title.

2. Alternatively, the Title Should be Amended to Clarify and Correct the Scope of Control Granted to Local Governments.

If the non-exhaustive list described above is not removed from the title, the title and its grammar must be amended to avoid voter confusion. If the Board elects to keep the exemplars, then the title requires amendment to correct both grammatical and substantive errors.

*First*, Initiative #291 would not grant, as the title seems to say, local government control over, for example, *energy production*. Rather, Initiative #291’s scope is narrowly tailored to cover only land use regulations and decisions, and thus would only grant local governments control over the *siting* of such energy projects.

A similar rationale applies to “roads and bridges” and “environmental regulations.” To be sure, Initiative #291 does not grant local government control over everything related to these topics, and, unlike energy projects, does not grant control over the *siting* of environmental regulations, which seems to create a non sequitur in the title. Given the fact that different land use activities could be implicated in different ways under the measure, to remain accurate, the title must carefully thread the needle if it is to incorporate specific land use activities. As written, the grammatical error appears to grant local governments much broader control than what the measure actually contemplates by not accurately specifying how the measure would affect the areas of activities listed.

*Second*, the phrasing is additionally misleading because it takes the defined term in the measure—“land use regulation or decision”—and summarizes that phrase as “zoning laws, regulations, and land use decisions.” Based on the measure’s plain text, “land use regulation or decision” is the umbrella category; “zoning laws” is an example of a *type* of land use decision. Indeed, Initiative #291 does not grant control over “zoning laws” as separate from land use regulations and decisions. Nevertheless, by referencing “zoning laws” first, the title erroneously suggests that “zoning laws” are separate from land use regulations and decisions. The title must be edited to avoid misleading voters.

Amending this portion of the title removes any confusion as to what type of control the initiative grants local governments and allows the title to flow accurately and consistently. *See Matter of Title, Ballot Title and Submission Clause, and Summary for 1997-98 No. 62*, 961 P.2d 1077, 1083 (Colo. 1998) (“The aim is to capture, in short form, the proposal in plain, understandable, accurate language . . .”). This construction also better reflects the Proponents’ intent as discussed at the initial hearing.

### 3. Use of “Exclusive Control” is misleading.

Finally, the title must be amended to accurately reflect the type of control granted to local governments over land use decisions. The title currently refers to the control granted to local governments as “complete and exclusive.” In the context of rights, “exclusive” is defined as “limited to a particular person, group, entity or thing.”<sup>1</sup> However, that is not how Initiative #291 operates.

While Initiative #291’s text uses the word “exclusive,” it does so within a specific context. The language in the Initiative states: “Local governments shall have plenary and exclusive control over land use regulations or decisions within their jurisdictions, including, without limitation, regulation of the siting, location of developments on and types of intensities of uses of land within their jurisdictions.” The next sentence discusses the interplay of local and state law governing land use, specifying that local control “shall have primacy and presumptive effect *over a state government entity’s conflicting determination*, rule, approval, permit, or statute regarding the same siting . . .” (emphasis added). Thus, holistically, the measure reads as providing exclusive control to local governments over land use decisions *only to the extent* that there is a conflict with state law.

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<sup>1</sup> EXCLUSIVE, Black's Law Dictionary (11th ed. 2019).

The title as adopted does not contain this important nuance, but rather states that local governments shall have “complete and exclusive control” over a list of items including, “zoning laws, regulations, and land use decisions within its jurisdiction, including energy production, roads and bridges, and environmental regulations providing that local laws, regulations, and decisions override any conflicting state land use law . . . .” As written, the title’s exclusivity provision is divorced from the important interplay between state and local decision making and thus, is misleading.

Simply put, Initiative #291 is far more nuanced than the title would lead voters to believe. It would not grant local governments control over land use decisions at the exclusion of the state, but instead provides a framework for dealing with conflicts when they occur between the state and a locality. To provide necessary clarity on the type of control Initiative #291 grants to local governments, the Proponents request that the word “exclusive” be removed from the title as it does not accurately reflect how the measure works in practice.

***b. The Proponents’ Updated Proposed Title For Initiative #291.***

The title below illustrates the necessary changes to Initiative #291’s title in order to comply with the clear title requirements:

An amendment to the Colorado constitution granting local governments primary regulatory authority over public and private land within their jurisdictions, and, in connection therewith, granting ~~a~~ local government S complete ~~and exclusive~~ control over ~~zoning laws, regulations, and~~ land use REGULATIONS AND decisions within THEIR jurisdiction S, ~~including energy production, roads and bridges, and environmental regulations,~~ providing that local laws, regulations, and decisions override any conflicting state land use law, regulation, or decision; and prohibiting the state from taking adverse action against a local government for its land use decisions or withholding any state required approval.

**III. Conclusion**

For the reasons stated above, the Proponents respectfully request that Title Board grant this Motion for Rehearing and amend the title accordingly.

Respectfully submitted this 24th day of April, 2024.

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# Initiative 291

## Legislative Council Staff

*Nonpartisan Services for Colorado's Legislature*

### Fiscal Summary

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**Date:** April 15, 2024      **Fiscal Analyst:** Josh Abram (303-866-3561)

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#### LCS TITLE: LOCAL CONTROL OVER LAND USE

#### Fiscal Summary of Initiative 291

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 [leg.colorado.gov/bluebook](https://leg.colorado.gov/bluebook). This fiscal summary identifies the following impact.

**State government impacts.** The measure establishes the exclusive control of local governments' regulations related to land use within their jurisdictions, and invalidates or prohibits conflicting land use laws or rules of any state governmental entity. State law regulates many areas of land use, including oil and gas and mining operations, alcohol beverage sales, water operations, and the management of state highways, lands and buildings in local jurisdictions. The measure will increase the state's legal expenses for the Attorney General and state agencies to interpret the measure in the courts whenever the regulation or enforcement of a state law or rule conflicts with the land use or zoning decisions of a local government. This cost is dependent on future actions of local governments and cannot be estimated.

**Local government impacts.** Similar to the state, local governments that choose to adopt ordinance or rules that conflict with state law may have an increase in legal expenses to defend those decisions in court. These costs are not estimated.

**Economic impacts.** Future land use decisions have economic impacts on land owners and surrounding areas. Any impact on the economy is dependent on future land use decisions made by the state and local governments and cannot be estimated.