

<b>SUPREME COURT, STATE OF COLORADO</b> <b>2 East 14<sup>th</sup> Avenue</b> <b>Denver, Colorado 80203</b>	
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 #150  <b>Petitioner:</b> ALETHIA MORGAN  v.  <b>Respondents:</b> EVELYN HAMMOND and LUCAS GRANILLO  and  <b>Title Board:</b> THERESA CONLEY, JEREMIAH BARRY, and KURT MORRISON	<b>▲ COURT USE ONLY ▲</b>
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<b>RESPONDENTS' ANSWER BRIEF IN SUPPORT OF PROPOSED INITIATIVE 2023-2024 #150</b>	

## CERTIFICATE OF COMPLIANCE

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

It contains 3202 words.

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

By: s/Martha M. Tierney\_\_\_\_\_

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Evelyn Hammond and Lucas Granillo (jointly “Proponents” or “Respondents”), registered electors of the State of Colorado, through their undersigned counsel, respectfully submit this Answer Brief in support of the title, ballot title and submission clause (jointly, the “Title”) that the Title Board set for Proposed Initiative 2023-2024 #150 (“Initiative #150”).

### **SUMMARY OF THE ARGUMENT**

Petitioner Alethia Morgan’s opening brief centers around a consistent theme: Initiative #150 may affect several laws that create damage caps. But this does not render it an inappropriate subject for a citizen’s initiative, or somehow bar a clear title setting. The Title Board properly exercised its broad discretion in drafting the title for Initiative #150. The Title satisfies Colorado law because it fairly and accurately sets forth the major features of Initiative #150 and is not misleading.

Initiative #150 contains a single subject: allowing a person to recover the total amount of monetary damages awarded by a jury or judge in a lawsuit involving catastrophic injury or wrongful death. The remaining provisions, including exempting certain types of lawsuits from the initiative’s scope, establishing a preponderance of the evidence as the burden of proof in these lawsuits, and setting forth key definitions of terms used in the measure, are all implementing and enforcement details that flow from the measure’s single subject.

Petitioner Morgan raises three single subject objections, but two of those objections – the measure removes all damages caps across different statutes, and to any extent that the measure removes the judiciary’s oversight over punitive damages – really are part of the measure’s single subject. The third single subject objection is that the measure changes the burden of proof, but this objection also fails because it is an implementation detail tied to the measure’s single subject. Petitioner Morgan’s concerns about the effects that Initiative #150 could have on other laws or its application if enacted are not appropriate for review at this stage.

Petitioner Morgan also perfunctorily raises some clear title objections, including that the title includes an impermissible catchphrase by using the term “catastrophic injury.” But that phrase is the commonly used term to describe the type of lifechanging injury at issue and does not work in favor of the measure without contributing to voter understanding.

The remaining objections to clear title lack merit. Petitioner Morgan objects that the title fails to list out other statutes that might be effected by the measure, that it fails to inform voters about how the measure might change the judiciary’s role in determining punitive damages, and that it does not include the burden of proof contained in the measure. But these concerns do not override the

discretion of the Title Board to draft a brief title that captures the major features of the measure.

The Title Board is only obligated to fairly summarize the central points of a proposed measure and need not refer to every nuance and feature of the proposed measure. While a title must be fair, clear, accurate and complete, it is not required to set out every detail of an initiative.

This Court should affirm the Title Board's decision.

## **ARGUMENT**

### **I. Initiative #150 Has a Single Subject.**

#### **A. The Removal of Damage Caps Does Not Violate the Single Subject Requirement.**

Petitioner Morgan argues that Initiative #150 violates the single subject requirement because it removes damage caps in existing statutes that were put in place for different policy reasons, or that have separate purposes. *See Pet. Op. Brief*, pp. 10-21.

The single subject of Initiative #150 is the removal of damage caps in lawsuits involving catastrophic injury or wrongful death. The measure makes clear that it allows a person to recover the total amount of monetary damages awarded by a jury or judge in a lawsuit involving catastrophic injury or wrongful death,



*notwithstanding any contrary limit on any type of damages found in law.* The removal of damage caps in other statutes is not a separate subject.

In arguing that the measure violates the single subject requirement, Petitioner Morgan lists a litany of statutes that might be impacted by Initiative #150 if adopted by the voters. *See Pet. Op. Brief*, pp. 12-21. It is not a violation of the single subject requirement if a measure impacts other laws. *In re Amend Tabor #32*, 908 P.2d 125 (Colo. 1995) is illustrative. In that case, an initiative established a \$ 60 tax credit that applied to six state or local taxes and required the state to replace resulting lost local revenue monthly. Opponents of the initiative argued, among other things, that the initiative violated the single subject requirement because it applied the tax credit to more than one tax. In finding the initiative contained a single subject, this Court held that “[a]lthough the Initiative applies the tax credit to more than one tax, the single purpose of the Initiative is the implementation of a tax credit. All six taxes are connected to the same tax credit and are bound by the same limitations.” *Id.* at 129.

Similarly, in *In re Initiative for 2007-2008 # 62*, 184 P.3d 52 (Colo. 2008), opponents argued that an initiative violated the single subject requirement because it effected several other statutes, including the state’s civil service system and the employment at-will doctrine. Finding a single subject, this Court held that “[i]n

determining whether a proposed initiative comports with the single subject requirement, we do not address the merits of a proposed initiative, nor do we interpret its language or predict its application if adopted by the electorate." *Id.* at 59.

Initiative #150 may change damage caps in other statutes in a situation where the claim involves catastrophic injury including death, but these are effects of the measure, and this is precisely the type of analysis that the Court may not engage in at this stage. The “effects th[e] measure could have on Colorado ... law if adopted by voters are irrelevant” to the single subject inquiry. *In re Initiative for 2013–2014 #90*, 2014 CO 63, ¶¶ 11, 17; *see also In re Initiative for 2019-2020 #3*, 2019 CO 57, ¶ 8 (The Court does “not address the merits of the proposed initiative” or “suggest how it might be applied if enacted.”).

The cases cited by Petitioner in support of this argument are distinguishable. For example, in *In re Initiative for 2007-2008, #17*, 172 P.3d 871, 876 (Colo. 2007) this Court found a violation of the single subject requirement because the measure created an environmental conservation department and a public trust standard. In *In re Initiative for 2009-2010 #91*, 235 P.3d 1071, 1080 (Colo. 2010), the measure created a beverage container tax and also limited the General Assembly’s authority over water basin roundtables. Here, the elimination of

damage caps where a claim involves catastrophic injury or death is not the type of broad umbrella subject this Court has rejected in the past. Initiative #150 applies only to those damage caps that involve catastrophic injury include death. A proposed measure that "tends to effect or to carry out one general objective or purpose presents only one subject." *In re Title v. John Fielder*, 12 P.3d 246, 253 (Colo. 2000).

Finally, Petitioner errs when she contends that the measure eliminates a trial court's ability to order a new trial in the event the court finds the jury verdict is tainted by bias, prejudice, and passion or juror misconduct under the rules of civil procedure. *Pet. Op. Brief*, pp. 18-19. Initiative #150 does not purport to remove any of a court's inherent powers of post-trial review under C.R.C.P. 59. If a jury reached an improper result because of passion, prejudice, or bias, Initiative #150 does not alter the judge's authority to order a new trial.

**B. The Burden of Proof Set forth in the Measure Is Not a Separate Subject.**

Petitioner Morgan contends that the inclusion of a burden of proof standard creates a second subject separate and apart from the measure's single subject. *Pet. Op. Brief*, pp. 22-24. Even if, as Petitioner suggests, there are different standards of proof for certain enhanced damages in existing Colorado statutes, this effect on

other damage laws is not a separate subject. Rather, it is all part of the single subject of the measure: to remove damage caps in lawsuits involving catastrophic injury or wrongful death. The measure's inclusion of a burden of proof for suits involving catastrophic injury or death is not a separate subject, but an implementation detail. "An initiative with a single, distinct purpose does not violate the single-subject requirement simply because it spells out details relating to its implementation." *Howes v. Hayes (In re Title, Ballot Title & Submission Clause)*, 962 P.2d 927, 929 (Colo. 1998). If the procedures specified have "a necessary and proper relationship to the substance of the initiative, they are not a separate subject." *Id.*

Instead, what Petitioner argues about is the effect of the measure on other laws, which is not an appropriate consideration at this stage of the initiative process. *In re 2013–2014 #90*, 2014 CO 63, ¶¶ 11, 17 (The "effects th[e] measure could have on Colorado ... law if adopted by voters are irrelevant" to the single subject inquiry.).

**C. Initiative #150's Effects on Who Determines Enhanced Damages, if Any, Is Not a Separate Subject.**

In her Opening Brief, Petitioner Morgan claims that Initiative #150 violates the single subject requirement because it "eliminates the requirement that courts, as opposed to juries, must find enhanced damages are warranted." *Pet. Op. Brief*, p.

22. Again, what Petitioner Morgan complains about is the single subject of the measure: the removal of damage caps in lawsuits involving catastrophic injury or wrongful death. The measure also makes clear that it is the judge's or the jury's total award of damages that must be upheld. *See Initiative #150* at §13-21-102.7 (1). The measure's primary purpose is to allow a person to recover the total amount of monetary damages awarded by a jury or judge in a lawsuit involving catastrophic injury or wrongful death. There is nothing coiled up in the folds of the measure on this point - the removal of damage caps is the single subject of the measure, and any impact of the measure on other statutes is not a separate subject.

Indeed, the crux of Petitioner's argument appears to be that eliminating damage caps in lawsuits involving catastrophic injury or wrongful death is a bad policy choice. Petitioner contends that the "sweeping changes" to laws impacted by the measure are being pursued because existing laws are "disfavored by the plaintiffs' bar advancing the measure." *Pet. Op. Brief*, p. 24. But this Court has repeatedly held that "[w]hether a proposed initiative is a 'bad idea' is not the test of whether it meets the single subject requirement. *In re 2013–2014 #90*, 2014 CO 63, ¶ 21.

In sum, Petitioner's single subject argument here is speculation about the effects that the initiative might have on existing statutes. But that is not a proper

objection to the single subject requirement. The Court is prohibited from “addressing the merits of a proposed initiative, and from suggesting how an initiative might be applied if enacted.” *In re Title, Ballot Title, and Submission Clause of 2011-2012 #45*, 2012 CO 26, ¶ 9. A proposed initiative that “tends to affect or carry out one general objective or purpose presents only one subject,” and “provisions necessary to effectuate the purpose of the measure are properly included within its text.” *In re 2013-2014 #90*, 2014 CO 63, ¶ 11.

Initiative #150 meets the single subject requirement.

## **II. The Title Is Not Misleading.**

### **A. The Title Need Not List Out All Statutes That May be Affected by the Measure.**

Petitioner Morgan erroneously contends that the title is misleading because it does not list out a “host of damages-related laws changed by the measure.” *Pet. Op. Brief*, p. 27. The Title Board considered Petitioner’s concerns in this regard but rejected her request to enumerate all impacted laws, and instead inserted language into the title advising voters that the measure “eliminat[es] the statutory limitations on economic, non-economic, and punitive monetary damages for catastrophic injury or wrongful death.” In so doing, the Title Board exercised its discretion to craft a title that alerts voters that the measure eliminates existing statutory limits on economic, non-economic, and punitive monetary damages for

catastrophic injury or wrongful death. “It is not the function of the Board to determine the meaning of the language of an initiative. Nor is the function of the Board to disclose every possible interpretation of the language of the initiative.” *In re Proposed Initiated Constitutional Amendment Concerning Fair Fishing*, 877 P.2d 1355, 1362 (Colo. 1994).

This Court should defer to the Title Board’s discretion. *In re Title, Ballot Title, & Submission Clause for 1999-2000 #256*, 12 P.3d 246, 255 (Colo. 2000) (“In reviewing the actions of the Board, we grant great deference to the board’s broad discretion in the exercise of its drafting authority.”)

**B. The Title Does Not Need to Include the Burden of Proof.**

Petitioner Morgan claims, without analysis, that the title is misleading because it does not state that the measure includes a preponderance of the evidence burden of proof. The Title Board used its discretion in opting not to include the burden of proof, an implementation detail, in the title for Initiative #150. “It is well-established that the titles and summary need not spell out every detail of a proposed initiative in order to convey its meaning accurately and fairly.” *Howes v. Hayes*, 962 P.2d at 930.

**C. The Title Need Not Speculate About the Impact to the Judiciary Branch.**

Petitioner Morgan again states, without analysis, that the title should mention that the measure may impact the role of the judiciary in overseeing damage awards and enhanced damages. *Pet. Op. Brief*, p. 28. The General Assembly has instructed the Board that “[b]allot titles shall be brief.” § 1-40-106(3)(b). Accordingly, the title must “summarize the central features of a proposed initiative,” but it need not “include a description of every feature” of the measure. *In re Initiative for 2019-2020 #3*, 2019 CO 107, ¶ 16.

Here, the title clearly states that the measure “eliminat[es] the statutory limitations on economic, non-economic, and punitive monetary damages for catastrophic injury or wrongful death.” Given the Title Board’s broad “discretion in resolving problems of length, complexity, and clarity in setting a title and ballot title and submission clause,” the title reasonably explains the change to existing statutory limitations on damages. *In re 2013-2014 #90*, 2014 CO 63, ¶ 24.

**D. Catastrophic Injury Is Not a Catch Phrase.**

Finally, Petitioner Morgan argues, without any explanation, that the title for Initiative #150 contains an impermissible catchphrase by including the term “catastrophic injury,” instead of using a partial definition of that term. *Pet. Op. Brief*, p. 28. A phrase is a catchphrase if it “work[s] in favor of a proposal



without contributing to voter understanding.” *In re Initiative for 2015-2016 #63*, 2016 CO 34, ¶ 24. “[P]hrases that merely describe the proposed initiative are not impermissible catch phrases.” *In re Initiative for 2013-2014 #85*, 2014 CO 62, ¶ 31.

Here, the term “catastrophic injury” contributes to a voter’s understanding of Initiative #150. Petitioner Morgan’s suggestion to use only part of the actual definition of “catastrophic injury” will not add to voter understanding and would more likely lead to voter confusion.

The Title Board rejected Petitioner Morgan’s catch phrase contention, and appropriately included the term “catastrophic injury” in the title for Initiative #150.

## **CONCLUSION**

The Proponents respectfully request the Court to affirm the actions of the Title Board regarding Proposed Initiative 2023-2024 #150.

Respectfully submitted this 24<sup>th</sup> day of April 2024.

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## CERTIFICATE OF SERVICE

I hereby certify that on this 24<sup>th</sup> day of April 2024 a true and correct copy of the foregoing **RESPONDENTS' ANSWER BRIEF IN SUPPORT OF PROPOSED INITIATIVE 2023-2024 #150** was filed and served via the Colorado Courts E-Filing System to the following:

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