

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

DATE FILED: April 10, 2024 5:07 PM

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

PHILIP J. WEISER, Attorney General
EMMA GARRISON, Assistant Attorney
General*
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 8th Floor
Denver, CO 80203
Telephone: 720.508.6352
E-Mail: emma.garrison@coag.gov
Registration Number: 42110
**Counsel of Record for the Title Board*

THE TITLE BOARD'S OPENING 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 3,744 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.

/s/ Emma Garrison

EMMA GARRISON, 42110*
Assistant Attorney General

TABLE OF CONTENTS

	PAGE
ISSUES ON REVIEW	1
STATEMENT OF THE CASE	1
SUMMARY OF THE ARGUMENT	3
ARGUMENT	4
I. The proposed initiative contains a single subject.....	4
A. Standard of review and preservation	4
B. The removal of damages caps in lawsuits involving catastrophic injury or wrongful death constitutes a single subject.....	6
C. The title serves the purposes intended by the single subject requirement	8
1. The title does not constitute impermissible “logrolling.”	8
2. The title does not present risk of voter surprise.....	10
D. The assertions about initiative #150’s potential effects do not change the single subject analysis	11
1. The potential effects of a proposed initiative are not relevant to the single subject inquiry.....	11
2. Initiative #150 would not create a new cause of action	12
II. #150 satisfies the clear title standard	16
A. Standard of review and preservation	16
B. The title is not misleading.....	17
1. #150’s title informs voters precisely what the measure will do	17

TABLE OF CONTENTS

	PAGE
2. The use of the phrase “catastrophic injury” does not violate the clear title requirement.....	19
CONCLUSION.....	21

TABLE OF AUTHORITIES

PAGE

CASES

<i>Beach v. Beach</i> , 74 P.3d 1 (Colo. 2003)	15
<i>Estate of Kronemeyer v. Meinig</i> , 948 P.2d 119 (Colo. App.1997).....	14
<i>Hansen v. Barron’s Oilfield Serv., Inc.</i> , 2018 COA 132.....	14
<i>Herrera v. Glau</i> , 772 P.2d 682 (Colo. App. 1989).....	13
<i>In re Amend Tabor No. 32</i> , 908 P.2d 125 (Colo. 1995)	7
<i>In re Matter of Title, Ballot Title & Submission Clause for 1997- 1998 No. 74</i> , 962 P.2d 927 (Colo. 1998)	18
<i>In re Matter of Title, Ballot Title & Submission Clause for 2015- 2016 #156</i> , 2016 CO 56.....	17
<i>In re Proposed Ballot Initiative on Parental Rights</i> , 913 P.2d 1127 (Colo. 1996)	7
<i>In re Title, Ballot Title, & Submission Clause for 2007-2008 #62</i> , 184 P.3d 52 (Colo. 2008)	11
<i>In re Title, Ballot Title & Submission Clause for 2009-2010 #45</i> , 234 P.3d 642 (Colo. 2010)	17, 20, 21
<i>In re Title, Ballot Title, & Submission Clause for 2011-2012 #45</i> , 2012 CO 26.....	10
<i>In re Title, Ballot Title, & Submission Clause for 2013-2014 #76</i> , 2014 CO 52.....	5
<i>In re Title, Ballot Title, & Submission Clause for 2013-2014 #85</i> , 2014 CO 62.....	19

TABLE OF AUTHORITIES

	PAGE
<i>In re Title, Ballot Title, & Submission Clause for 2013–2014 #89,</i> 2014 CO 66.....	6, 9
<i>In re Title, Ballot Title & Submission Clause for 2013–2014 #90,</i> 2014 CO 63.....	5, 7, 12, 16
<i>In re Title, Ballot Title, & Submission Clause for 2019–2020 #3,</i> 2019 CO 57.....	5
<i>In re Title, Ballot Title, & Submission Clause for 2019-2020 #3,</i> 2019 CO 107.....	19, 20
<i>In re Title, Ballot Title, & Submission Clause for 2021-2022 #16,</i> 2021 CO 55.....	4, 8
<i>Matter of Title, Ballot Title & Submission Clause for 2015-2016</i> <i>#73, 2016 CO 24.....</i>	16
<i>Matter of Title, Ballot Title & Submission Clause for 2019-2020</i> <i>#3, 442 P.3d 867 (Colo. 2019)</i>	12
<i>Matter of Title, Ballot Title, Submission Clause, & Summary</i> <i>Pertaining to a Proposed Initiative Pub. Rts. in Waters II, 898</i> <i>P.2d 1076 (Colo. 1995), as modified on denial of reh’g (July 31,</i> <i>1995).....</i>	8
<i>Parrish v. Lamm, 758 P.2d 1356 (Colo. 1988)</i>	18
<i>People v. Dist. Ct., Second Jud. Dist., 713 P.2d 918 (Colo. 1986)</i>	15
<i>People v. Market, 475 P.3d 607 (Colo. App. 2020)</i>	15
<i>People v. Sa’ra, 117 P.3d 51 (Colo. App. 2004)</i>	18
<i>People v. White, 2023 CO 43.....</i>	20
<i>Reighley v. Int’l Playtex, Inc., 604 F. Supp. 1078 (D. Colo. 1985)</i>	13

TABLE OF AUTHORITIES

	PAGE
<i>Whitenhill v. Kaiser Permanente</i> , 940 P.2d 1129 (Colo. App. 1997)	13
CONSTITUTIONS	
COLO. CONST. art. V, § 1(5.5)	4, 16
STATUTES	
§ 1-40-107, C.R.S.	1
§ 13-21-102.7, C.R.S.	13
§ 13-21-201 et seq., C.R.S.	3, 11, 12, 13, 14, 15
§ 13-21-201(1)(a), C.R.S.	14
§ 13-21-201(1)(b)(I), C.R.S.	13
§ 24-33.5-1229(3)(a), C.R.S.	20
OTHER AUTHORITIES	
Catastrophe, <i>Merriam-Webster Online Dictionary</i> , available at https://tinyurl.com/5n8fhuz6	21
March 20, 2024 Rehearing before the Title Board available at https://tinyurl.com/3tkd8m44	2, 3, 18, 19

ISSUES ON REVIEW

- I. Whether Initiative 2023-2024 #150 contains a single subject.
- II. Whether the Title Board set a clear title for Initiative 2023-2024 #150.¹

STATEMENT OF THE CASE

Proposed Initiative 2023-2024 #150 seeks to remove limits on the recovery of damages awarded in lawsuits that involve catastrophic injury or wrongful death. The Board set a title on the measure at its March 6, 2024 hearing. *See* Record for #150, p 5, filed March 27, 2024 (“Record”). Petitioner Alethia Morgan filed a timely motion for rehearing under § 1-40-107, C.R.S. *Id.* at 9–21. At rehearing, Morgan argued that (1) #150 has multiple separate subjects, *id.* at 10–19, and (2) the title is unfair, inaccurate, and incomplete, *id.* at 19–20.

¹ The Title Board’s numbering of the Issues on Review I–II corresponds to Petitioner Morgan’s designation of the Issues 1–2. *See* Pet. for Review, p 4.

On March 20, 2024, the Motion for Rehearing was granted only to the extent the Board made changes to the title. The changes made at rehearing were as follows:

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

Shall there be a change to the Colorado Revised Statutes allowing a person to recover the total amount of monetary damages awarded by a jury or judge in a lawsuit ~~for~~**involving** catastrophic injury or wrongful death unless the lawsuit is against a ski area, server of alcohol beverages, or the State of Colorado, and, in connection therewith, eliminating the statutory limitations on **economic, non-economic, and punitive** monetary damages for catastrophic injury or wrongful death?

The discussion at rehearing reflects that the Board made these edits in response to Morgan’s concerns. *See* March 20, 2024 Reh’g before the Title Bd. (“Rehearing”), at 11:28:13–11:34:33 *available at* <https://tinyurl.com/3tkd8m44>. Specifically, the Board added the language “economic, non-economic, and punitive” in response to concern that “monetary damages” might confuse voters. *Id.* at 11:29:00–11:34:33; *see also* Record, p 19. The Board also revised the phrase “**for** catastrophic injury” to “**involving** catastrophic injury” to better reflect the language in the initiative and avoid “a distinction that has

significant hidden implications.” Record at p 19; *see also* Rehearing, at 11:28:27.

SUMMARY OF THE ARGUMENT

The Board set an appropriate title for 2023-2024 #150. The initiative contains the single subject of removing damages caps in certain instances. It creates one new section in the Colorado Revised Statutes that would give parties the right to collect the total amount of damages awarded in lawsuits involving catastrophic injury or wrongful death, with certain exceptions. The measure does not constitute impermissible “logrolling,” nor does it present the risk of voter surprise. Morgan’s assertion that this initiative surreptitiously creates a new cause of action overriding the Colorado Wrongful Death Act is unfounded and therefore does not create a second subject.

The title of #150 is clear because it accurately and succinctly describes the initiative’s single subject. It is not misleading, and its use of the phrase “catastrophic injury” is not problematic. The title is not required to include the details about every other statute the measure might impact, as has been asserted here. Additionally, on rehearing, the

Board addressed Morgan’s concerns about certain language in the title that might mislead voters. Finally, “catastrophic injury” is not an impermissible catch phrase because it is a defined term in the proposed statute and would aid voter comprehension.

Morgan’s arguments cannot overcome the deference this Court must extend to the Board. The Court should affirm the title set for #150.

ARGUMENT

I. The proposed initiative contains a single subject.

A. Standard of review and preservation.

“No measure shall be proposed by petition containing more than one subject” and “[i]f a measure contains more than one subject ... no title shall be set.” COLO. CONST. art. V, § 1(5.5). The Board enjoys “considerable discretion” in setting the title, and the Court will “overturn the Board’s finding that an initiative contains a single subject *only in a clear case.*”

In re Title, Ballot Title, & Submission Clause for 2021-2022 #16, 2021 CO 55, ¶¶ 8–9 (quotations omitted) (emphasis added). “In reviewing a challenge to the Title Board’s single subject determination, [the Supreme Court] employ[s] all legitimate presumptions in favor of the Title Board’s

actions.” *In re Title, Ballot Title, & Submission Clause for 2013–2014 #76*, 2014 CO 52, ¶ 8.

The Court does “not address the merits of the proposed initiative” or “suggest how it might be applied if enacted.” *In re Title, Ballot Title, & Submission Clause for 2019–2020 #3*, 2019 CO 57, ¶ 8. Instead, the Court “must examine the initiative’s wording to determine whether it comports with the constitutional single-subject requirement.” *Id.* To satisfy the single-subject requirement, the “subject matter of an initiative must be necessarily and properly connected rather than disconnected or incongruous.” *In re 2013–2014 #76*, 2014 CO 52, ¶ 8. Where an initiative “tends to ... carry out one general objective” or central purpose, the “effects th[e] measure could have on Colorado ... law if adopted by voters are irrelevant” to the single subject inquiry. *In re Title, Ballot Title & Submission Clause for 2013–2014 #90*, 2014 CO 63, ¶¶ 11, 17 (quotations omitted).

The Title Board agrees that Morgan preserved single-subject objections in her motion for rehearing. Record, pp 10-19.

B. The removal of damages caps in lawsuits involving catastrophic injury or wrongful death constitutes a single subject.

The single subject of #150 is the removal of damages caps in certain lawsuits. Specifically, the measure gives parties the right to collect the total amount of damages awarded in lawsuits involving catastrophic injury or wrongful death, regardless of other provisions to the contrary. Record, p 3. The title set by the Board concisely and accurately recites this subject, including the circumstances when it would not apply, *i.e.*, lawsuits against ski areas, servers of alcohol beverages, or the State of Colorado. *Id.* at 3, 7.

While the initiative might impact the applicability of multiple other damages provisions, *see* Record, pp 11–16, it still has the central purpose of removing limits in all lawsuits that involve catastrophic injury or wrongful death. Because Initiative #150 “encompasses *related* matters it does not violate the single subject requirement.” *In re Title, Ballot Title, & Submission Clause for 2013–2014 #89*, 2014 CO 66, ¶ 12 (internal quotation marks omitted) (emphasis in original). The “effects th[e] measure could have on Colorado ... law if adopted by voters are

irrelevant” to the single subject inquiry. *In re Title, Ballot Title & Submission Clause for 2013–2014 #90*, 2014 CO 63, ¶¶ 11, 17 (quotations omitted).

This Court has consistently held that voter initiatives can impact multiple aspects of a central purpose without violating the single subject requirement. For instance, this Court concluded that the provisions of a voter initiative that sought to establish parental rights concerning children in four distinct areas—upbringing, education, values, and discipline—were sufficiently connected to satisfy the single subject requirement. *In re Proposed Ballot Initiative on Parental Rights*, 913 P.2d 1127, 1131 (Colo. 1996). Similarly, an initiative establishing a tax credit that applied to multiple taxes satisfied the single subject requirement because “[a]ll **six taxes** [we]re connected to the **same tax credit** and [we]re bound by the **same limitations**.” *In re Amend Tabor No. 32*, 908 P.2d 125, 129 (Colo. 1995) (emphasis added).

Because there is a clear central purpose here, the single subject requirement is satisfied.

C. The title serves the purposes intended by the single subject requirement.

The single-subject rule is intended to prevent two “evils”: “logrolling” and fraud. In light of these two purposes, this Court “has often taken into account whether voters might favor only part of an initiative and the potential for voter surprise.” *In re Title, Ballot Title, & Submission Clause for 2021-2022 #16*, 2021 CO 55, ¶ 16. The title approved by the Board does not implicate these concerns.

1. The title does not constitute impermissible “logrolling.”

Initiative #150 is not an instance of “logrolling,” which refers to the “joining together of multiple subjects into a single initiative in the hope of attracting support from various factions which may have different or even conflicting interests.” *See Matter of Title, Ballot Title, Submission Clause, & Summary Pertaining to a Proposed Initiative Pub. Rts. in Waters II*, 898 P.2d 1076, 1079 (Colo. 1995), as *modified on denial of reh’g* (July 31, 1995). “The risk of logrolling is low” when the elements of the measure “point in the same direction.” *See Matter of*

Title, Ballot Title & Submission Clause for 2021-2022 #16, 2021 CO 55, ¶ 33.

Here, the title points only in the direction of removing damages caps. Morgan alleges that voters might favor removal of some damages caps, but not others, depending on the nature of the lawsuit. Record, p 13. It seems unlikely that removal of damages caps would attract support from different “factions” with “conflicting goals.” *See Matter of Title, Ballot Title, & Submission Clause for 2013–2014 #89*, 2014 CO 66, ¶ 18. Rather, voters are likely to vote for or against the measure based on their general feelings about a plaintiff’s entitlement to large damages awards in the context of catastrophic injury or death. *See id.* (“Because the subsections are all related to the accomplishment of a single purpose, the proposal will pass or fail on its own merits and does not run the risk of garnering support from factions with different or conflicting goals.”).

The initiative’s central purpose of removing damages caps does not join together multiple subjects.

2. The title does not present risk of voter surprise.

The anti-fraud purpose of the single subject rule protects against “voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision coiled up in the folds of a complex initiative.” *In re Title, Ballot Title, & Submission Clause for 2011-2012 #45*, 2012 CO 26, ¶ 12 (quotations omitted). In the petition for rehearing, Morgan asserted that #150 “[i]ncorrectly stat[ed] that measure applies only to lawsuits *‘for catastrophic injury or wrongful death’* when the measure applies to damages awards in any action ‘involving’ these things.” Record, p 19 (emphasis in original). The Board addressed this concern by changing “for” to “involving.” See Record, p 7. The Title Board also addressed any potential confusion that use of the language “monetary damages” might have caused by clarifying that the initiative would apply to “economic, non-economic, and punitive monetary damages.” Record, pp 7, 19. And, as discussed *infra*, the initiative will not surprise voters by folding in a new cause of action.

The title conveys what voters are voting for – the removal of damages caps – and does not implicate concerns of fraud.

D. The assertions about initiative #150's potential effects do not change the single subject analysis.

1. The potential effects of a proposed initiative are not relevant to the single subject inquiry.

Morgan's arguments that this initiative would (1) usurp the longstanding Colorado Wrongful Death Act, Record pp 16–18, (2) decrease the burden of proof required for enhanced damages, Pet. for Rev. p 4, or (3) remove the judiciary's oversight of juries' damages awards, *id.*, all go to the merits of the measure and its possible effects. None of these weigh in favor of rejecting the measure on single-subject grounds. "In determining whether a proposed initiative comports with the single subject requirement, [the Court does] not address the merits of a proposed initiative, nor [does the Court] ... predict its application if adopted by the electorate." *In re Title, Ballot Title, & Submission Clause for 2007-2008 #62*, 184 P.3d 52, 59 (Colo. 2008) (quotations omitted) (emphasis removed). Because this argument concerns the potential effects and consequences of the measure, not the measure itself, it does not show a violation of the single subject rule. *See* Record,

pp 16–18; Pet. for Rev., p 4. “[T]he effects this measure could have on Colorado law if adopted by voters are irrelevant to [a] review of whether the proposed initiative and its Titles contain a single subject.” *In re Title, Ballot Title & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 17 (quotations and alterations omitted); *see also Matter of Title, Ballot Title and Submission Clause for 2019-2020 #3*, 442 P.3d 867, 870 (Colo. 2019) (“[T]o conclude that the initiative here comprises multiple subjects would require us to read language into the initiative that is not there and to address the merits of that initiative and suggest how it might be applied if enacted. As noted above, however, we are not permitted to do so.”).

Because these arguments go to the merits and potential impacts of #150, they do not change the single subject analysis here.

2. Initiative #150 would not create a new cause of action.

Even if this Court were to interpret the potential effects of this measure, #150 does not surreptitiously create a new cause of action that would override the Colorado Wrongful Death Act. *See Record*, p 16.

Therefore, there is no reason to conclude Initiative #150 has a second subject on this basis.

The Wrongful Death Act, § 13-21-201 *et seq.*, C.R.S., “gives standing only to those individuals specifically designated, and vests the primary, exclusive right in the surviving spouse unless suit is not brought within the year after death.” *Reighley v. Int'l Playtex, Inc.*, 604 F. Supp. 1078, 1080 (D. Colo. 1985) (citations omitted). In the second year, this right expands to include the decedent’s heirs and designated beneficiary. § 13-21-201(1)(b)(I), C.R.S. “[T]he term ‘heirs’ under the Act has been consistently construed to refer only to lineal descendants of the deceased.” *Whitenhill v. Kaiser Permanente*, 940 P.2d 1129, 1131 (Colo. App. 1997). It does not extend standing to siblings or parents of adult children. *Herrera v. Glau*, 772 P.2d 682, 683 (Colo. App. 1989).

Morgan’s concern is that the proposed new Section 13-21-102.7, C.R.S. would give a decedent’s family the right to recover damages and defines “family” expansively, including civil union partners, common law marriage spouses, and those legally permitted to inherit. Record, pp 3, 16–18. The proposed measure, however, provides only that “an

injured person or their family has the *right to recover* ... the total amount of damages awarded.” *Id.* (emphasis added). This is distinct from the Wrongful Death Act, which provides that damages “*may be sued for* and recovered” by designated individuals. § 13-21-201(1)(a), C.R.S. (emphasis added). While the proposed measure might expand the universe of who is entitled to recover damages, it does not give those individuals the right to sue for them.

It is unlikely that a court would construe the new measure as expanding who may bring a claim under the Wrongful Death Act. Colorado courts have consistently construed this act strictly because the right to sue for damages for wrongful death is a creature of statute and in derogation of the common law. *Estate of Kronemeyer v. Meinig*, 948 P.2d 119, 121 (Colo. App.1997); *Hansen v. Barron’s Oilfield Serv., Inc.*, 2018 COA 132, ¶ 14 (rejecting argument that the Wrongful Death Act should be interpreted liberally). In light of this, it would not be consistent with Colorado case law or the rules of construction for a court to interpret “right to recover” in the proposed measure as synonymous with the right to sue as stated in the Wrongful Death Act (damages

“may be sued for and recovered”.) *See Beach v. Beach*, 74 P.3d 1, 4 (Colo. 2003) (“A statute is not presumed to alter the common law except to the extent that such statute expressly provides.”). Additionally, the proposed measure would appear in Part 1 of Title 13, Article 21, which is titled “General Provisions,” not in the Wrongful Death Act provided for in Part 2. Importing this new provision in Part 1 to grant a new right of action in Part 2 would not be a strict construction. *See id.*

Reading the proposed new statute to apply only to those entitled to **recover** damages, not **sue** for them, also comports with the rules of statutory interpretation. “If two conflicting statutes can be construed to avoid inconsistency, [courts] are obligated to interpret the statutes in that way.” *People v. Market*, 475 P.3d 607, 611 (Colo. App. 2020); *see also People v. Dist. Ct., Second Jud. Dist.*, 713 P.2d 918, 921 (Colo. 1986) (“If separate clauses within a statute may be reconciled by one construction but would conflict under a different interpretation, the construction which results in harmony rather than inconsistency should be adopted.”). A harmonious interpretation of the proposed new statute would allow recovery of all damages awarded to family members who

already have the right to sue for damages, not give them a right to sue that does not currently exist.

Initiative #150 does not surreptitiously include a second subject by creating a new right of action.

II. #150 satisfies the clear title standard.

A. Standard of review and preservation.

A measure's single subject "shall be clearly expressed in its title." COLO. CONST. art. V, § 1(5.5). "The Title Board's duty in setting a title is to summarize the central features of a proposed initiative." *In re 2013–2014 #90*, 2014 CO 63, ¶ 24. The Board "is given discretion in resolving interrelated problems of length, complexity, and clarity in setting a title and ballot title and submission clause." *Id.* The Court will reverse the title set by the Board "only if a title is insufficient, unfair, or misleading." *Id.* ¶ 8. The Court does not "consider whether the Title Board set the best possible title." *Matter of Title, Ballot Title & Submission Clause for 2015-2016 #73*, 2016 CO 24, ¶ 24.

The Board agrees that Morgan preserved her challenges to the clear title set by the Board. Record, pp 19–20.

B. The title is not misleading.

A title is not misleading if “the title read as a whole fairly and accurately” describes the initiative. *In re Title, Ballot Title & Submission Clause for 2009-2010 #45*, 234 P.3d 642, 649 n.3 (Colo. 2010). This title does.

1. #150’s title informs voters precisely what the measure will do.

Morgan asserted that the title is misleading because #150’s succinct title does not delineate how it will impact other laws or convey the lawsuits and categories of damages to which it will apply. Record, p 19. This argument is not persuasive because the title – as revised upon rehearing – clearly conveys what it will do: remove limits on recovery of economic, non-economic, and punitive damages in lawsuits involving catastrophic injury or death, unless it is against a ski area, server of alcohol beverages, or the State. This is sufficient to “prevent voter confusion and ensure that the title adequately expresses the initiative’s intended purpose [such that] voters ... should be able to ‘determine intelligently whether to support or oppose the proposal.’” *In re Matter of*

Title, Ballot Title & Submission Clause for 2015–2016 #156, 2016 CO 56, ¶ 11.

The title is not required to include details about all Colorado statutes that the damages cap removal might implicate. “An appropriate general title [that] is broad enough to include all the subordinate matters considered is safer and wiser than an enumeration of several subordinate matters in the title.” *Parrish v. Lamm*, 758 P.2d 1356, 1363 (Colo. 1988). And “[t]here is no requirement that the title clearly express the act’s provisions or the details by which its object is to be accomplished.” *People v. Sa’ra*, 117 P.3d 51, 58 (Colo. App. 2004); see *In re Matter of Title, Ballot Title & Submission Clause for 1997-1998 No. 74*, 962 P.2d 927, 930 (Colo. 1998) (rejecting argument that title required more detail and stating “we find it highly unlikely that support for Initiative No. 74 would turn on whether it includes renovated apartments or condominiums”).

Further, the Board took Morgan’s suggestion at rehearing to revise the word “for” to “involving” to better reflect the text of the initiative. Rehearing, at 11:28:13; see *supra* Statement of the Case.

Similarly, after Morgan stated the concern that using the phrase “monetary damages” failed to distinguish between economic, non-economic, and punitive damages caps, the Board added language clarifying that the initiative would apply to all categories. Rehearing, at 11:29:00; *see supra* Statement of the Case.

As written, the title allows voters to understand that the measure intends to remove damages caps and under what circumstances.

**2. The use of the phrase
“catastrophic injury” does not
violate the clear title requirement.**

The Board “must avoid using catch phrases when setting a title.” *In re Title, Ballot Title, & Submission Clause for 2013–2014 #85*, 2014 CO 62, ¶ 31. But “[p]hrases that merely describe the proposed initiative are not impermissible catch phrases.” *Id.* Nor is a phrase a catch phrase “when it contributes to a voter’s rational comprehension and does not promote impulsive choices based on false assumptions about the initiative’s purpose and its effects if enacted.” *In re Title, Ballot Title, & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 28 (quotations omitted).

Morgan stated in the Motion for Rehearing that the Title Board should have used the initiative’s definition² of “catastrophic injury” rather than the term itself. “Catastrophic injury” is not an impermissible catch phrase because it “contributes to a voter’s rational comprehension” of #150. *See id.* Use of the phrase “catastrophic injury” would not implicate the concerns that the rule against catch phrases aims to prevent – specifically, “prejudicing voters ... by virtue of those words’ appeal to emotion” or “distracting voters from consideration of the proposed initiative’s merits.” *In re Title, Ballot Title, Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 649 (Colo. 2010).

The phrase “catastrophic injury” is used by courts and statutes as a descriptive term. *See, e.g., People v. White*, 2023 CO 43, ¶ 49 (“When the officers arrived on the scene, they quickly realized ... Mitchell had suffered catastrophic injuries.”); § 24-33.5-1229(3)(a), C.R.S. (“No benefit shall be paid under this section if ... [t]he fatal or catastrophic injury was caused by the intentional misconduct.”). The Board acknowledges

² The proposed initiative defines “catastrophic injury” as “death, dismemberment, permanent injury to the body or mind, or a severe injury that seriously limits activities of normal daily life.” Record, p 3.

that “catastrophic”³ is an inherently alarming word, particularly when associated with “injury.” But it is not prejudicial or distracting here because it accurately reflects the substance of the initiative, which includes a definition for “catastrophic injury.” Record, p 3. The Board’s inclusion of this phrasing was part of drafting a clear and accurate title. *See In re Title, Ballot Title & Submission Clause for 2009-2010 #45*, 234 P.3d 642, 649 n.3 (Colo. 2010).

The approved title does not use an impermissible catch phrase.

CONCLUSION

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

³ “Catastrophe” – the noun associated with the adjective “catastrophic” – is defined as “a momentous tragic event ranging from extreme misfortune to utter overthrow or ruin.” *Merriam-Webster Online Dictionary* at <https://tinyurl.com/5n8fhuz6>.

Respectfully submitted this 10th day of April, 2024.

PHILIP J. WEISER
Attorney General

/s/ Emma Garrison

EMMA GARRISON, 42110*
Assistant Attorney General
Ralph L. Carr Judicial Center
1300 Broadway, 8th Floor
Denver, CO 80203

**Counsel of Record for the Title Board*

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **THE TITLE BOARD'S OPENING BRIEF** upon all counsel of record by Colorado Courts E-filing (CCE), this 10th day of April, 2024.

/s/ Carmen Van Pelt