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<tr><td>SUPREME COURT, STATE OF COLORADO
2 East 14th Avenue
Denver, Colorado 80203</td><td rowspan="3">DATE FILED: May 14, 2024 4:30 PM

▲COURT USE ONLY▲</td></tr>
<tr><td>Original Proceeding
Pursuant to Colo. Rev. Stat. §1-40-107(2)
Appeal from the Ballot Title Board</td></tr>
<tr><td>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #291

Petitioners: Kevin Grantham and Cheri Jahn

v.

Respondent: Jessica Goad

and

Title Board: Theresa Conley, Jason Gelender, and Kurt Morrison</td></tr>
<tr><td>Attorneys for Respondent
Martha M. Tierney, No. 27521
TIERNEY LAWRENCE STILES LLC
225 E. 16th Street, Suite 350
Denver, CO 80203
Telephone: 303-356-4870
Email: mtierney@tls.legal</td><td>Case No.: 2024SA127</td></tr>
<tr><td colspan="2">RESPONDENT'S ANSWER BRIEF IN OPPOSITION TO PROPOSED INITIATIVE 2023-2024 #291</td></tr>
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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 1905 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.AR. 32.

By: s/Martha M. Tierney

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Jessica Goad ("Respondent"), registered elector of the State of Colorado, through her undersigned counsel, respectfully submit this Answer Brief in opposition to Proposed Initiative 2023-2024 #291 ("Initiative #291").[1]

SUMMARY OF THE ARGUMENT

Initiative #291 violates the single subject requirement because under the broad theme of "local control of land use decisions" the measure combines subjects with no necessary or proper connection. The measure grants "plenary and exclusive control" over "land use regulations and decisions" that will create voter surprise and fraud occasioned by the surreptitious provisions coiled up in the folds of a complex initiative. Voters may vote for this measure thinking that they are supporting a seemingly neutral local control initiative but be surprised to find out they have also required the state to issue approvals and permits to local governments that have nothing to do with "land use" on a whole host of topics that they did not intend, removing public safety safeguards, regulatory precautions, and

[1] Initiative #291 is nearly identical to Proposed Initiatives 2023-2024 #292 and #293, which have also been appealed by Petitioners Grantham and Jahn. Initiative #292 mirrors Initiative #291 except that it excludes from the definition of "land use regulation or decision" matters covered by Title 37 of the Colorado Revised Statutes (governing water and irrigation). Initiative #293 mirrors Initiative #292 except that it further excludes from the definition of "land use regulation or decision," any "state government statute, regulation, or decision impacting local governments made for the purpose of implementing federal laws or regulations."

many more. This removal of state authority on such a wide range of topics outside of land use is coiled up in the folds of Initiative #291.

The Title Board properly denied Petitioners' motion for rehearing on clear title when it determined that it lacked jurisdiction to set title based on a violation of the single subject requirement.

This Court should affirm the Title Board's decision to reflect the measure on single subject grounds.

ARGUMENT

I. Initiative #291 Contains Multiple Subjects.

In their opening brief, Petitioners assert that the text of their initiative has six interrelated parts, and that each of these parts relates to their ever-evolving umbrella single subject: "ensuring local government land use regulations and decisions control over conflicting state regulations and decisions." *Pet. Op. Br.* at 8. But the measure covers so many subjects with no necessary or proper connection that it will draw support for the initiative from various factions, and lead to voter surprise due to surreptitious provisions coiled up in its folds. *See In re Initiative for 2011-2012 #3*, 2012 CO 25, ¶11. "[A]ttempting to characterize an initiative under some general theme will not save [it] from violating the single-

subject rule if the initiative contains multiple subjects." *In re Initiative for 2021-2022 #67, 115, & #128*, 2022 CO 37, ¶14.

Here, for example, Section 17(4) of the proposed initiative states:

> 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.

That provision means that if a local government makes a land use decision that conflicts with state law, the state is compelled to issue a permit or approval to allow the land use proposed by the local government. In their Opening Brief and Petition for Review, Petitioners describe this second subject as follows:

> Section 17(4) provides that the *state cannot interfere with a local government's land use decision by denying permits necessary for the use*, ensuring the state cannot stifle local government land use decisions by denying permits when there is a conflict.

Pet. Op. Brf. at 8. (Emphasis supplied).

The Review and Comment memo and hearing also illustrate how this provision creates a second subject. In Question 12 of the Review and Comment memo, and during the hearing, the Legislative Council Staff and Office of Legislative Legal Services posed several hypotheticals to Petitioners asking how this provision is intended to work. *See* Review & Comment Memo, 2023-

2024%20%23291.002.pdf (colorado.gov), p. 6, ¶ 12; and Review & Comment Hearing, Colorado (sliq.net) at 9:24:24 – 9:26:36.

In each instance, when asked if the state must approve permits on a wide range of subjects if the local government makes a land use decision, Petitioners responded yes if there is a conflict between the local government decision and state law. When pressed about whether the Department of Revenue ("DOR") must approve a permit to operate to a retail marijuana dispensary if a local government approves of its location and zoning, even though the dispensary does not meet other criteria to obtain a permit to operate, such as sufficient financial footing, Petitioners said yes, or "we will consider making a clarification on this point." In the final text of the initiative, Petitioners did not make any substantive changes to Section 17(4) after the Review & Comment Hearing. *See* R. p. 4; 291Amended.pdf (state.co.us); 291AmendedCorrected.pdf (state.co.us).

Petitioners answered similarly in response to questions about whether the state must approve air and water quality permits to a refinery if a local government merely approves of its location and zoning, permits to drill for oil and gas if the drilling site is approved locally, and a permit to operate a hospital if the local government approves of its location and zoning – all without any review of a permit application or analysis to determine if the facility meets any other

requirements in the law. *See* Review & Comment Memo, 2023-2024%20%23291.002.pdf (colorado.gov), p. 6, ¶ 12; and Review & Comment Hearing, Colorado (sliq.net) at 9:24:24 – 9:26:36. Pursuant to the initiative, once the local government has made a land use decision, the state may not deny any permits or approvals necessary to implement that decision.

The mandated state approval or permit requirement contained in Section 17(4) of the measure does not just remove state decisions over land use when they conflict with a local government, but instead requires the state to issue all permits or approvals necessary to implement a local land use decision, even when such permits or approvals have nothing to do with land use. These non-land use permits or approvals might be for things such as air and water quality protections; background checks, and financial and residency requirements for certain businesses; and public safety safeguards, just to name a few.

This mandated approval or permit requirement allows local governments to place their own land use decisions above all other laws and regulations in the state. This is not an effect of the measure, but a separate subject inside the measure that is not "necessarily and properly connected" but is rather "disconnected or incongruous" to the asserted single subject of local control of land use decisions. *In re Initiative for 2013-2014* #76, 2014 CO 52, ¶ 8. The initiative runs the risk of

surprising voters with a surreptitious change not anticipated by the seemingly neutral requirement of local control over land use decisions. *See Johnson v. Curry (In re Initiative for 2015-2016 #132)*, 2016 CO 55, ¶ 26.

The Title Board correctly found that the measure violates the single subject requirement by attempting to unite multiple subjects under its broad general theme of local control of land use decisions. *See In re Public Rights in Waters II*, 898 P.2d 1076, 1080 (Colo. 1995).

II. The Title Board Properly Denied Petitioners' Motion for Rehearing Because It Lacked Jurisdiction to Set a Title.

"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 Title Board is "afforded discretion in resolving interrelated problems of length, complexity, and clarity in designating a title and ballot title and submission clause." *In re Initiative for 2015-2016 #73*, 2016 CO 24, ¶ 23.

The Title Board properly denied Petitioners' motion for rehearing on clear title. Because the Title Board determined that Initiative #291 contained multiple subjects, it therefore lacked jurisdiction to set a title. As a result, it properly denied Petitioners' motion for rehearing.

CONCLUSION

Respondent respectfully requests the Court to affirm the actions of the Title Board regarding Proposed Initiative 2023-2024 #291.

Respectfully submitted this 14th day of May 2024.

TIERNEY LAWRENCE STILES LLC

By: s/Martha M. Tierney
Martha M. Tierney, No. 27521
225 E. 16th Ave., Suite 350
Denver, Colorado 80203
Phone Number: (303) 356-4870
E-mail: mtierney@tls.legal

Attorneys for Respondent Goad

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of May 2024 a true and correct copy of the foregoing **RESPONDENT'S ANSWER BRIEF IN OPPOSITION TO PROPOSED INITIATIVE 2023-2024 #291** was filed and served via the Colorado Courts E-Filing System to the following:

Michael Kotlarczyk
Joseph G. Michaels
Assistant Attorney General
Colorado Attorney General's Office
1300 Broadway, 6th Floor
Denver, CO 80203
Mike.kotlarczyk@coag.gov
Joseph.michaels.@coag.gov
Attorney for the Title Board

Jason Dunn
David Meschke
Neil S. Sandhu
Denver Donchez
Brownstein Hyatt Farber Schreck, LLP
675 15th Street, Suite 2900
Denver, CO 80202
jdunn@bhfs.com
dmeschke@bhfs.com
nsandhu@bhfs.com
ddonchez@bhfs.com
Attorneys for Proponents Kevin Grantham and Cheri Jahn

s/Martha M. Tierney