

**COLORADO SUPREME COURT**

2 East 14<sup>th</sup> Avenue  
Denver, CO 80203

Original Proceeding  
Pursuant to Colo. Rev. Stat. § 1-40-107(2)  
Appeal from the Ballot Title Setting Board

In the Matter of the Title, Ballot Title, and  
Submission Clause for Proposed Initiative  
2023-2024 #270 (“Oil and Gas Operations Strict  
Liability for Damages”)

**▲ COURT USE ONLY ▲**

**Petitioners:**

Steven Ward and Suzanne Taheri

v.

**Respondents:**

Jessica Goad and Alicia Ferrufino-  
Coqueugniot

and

Title Board: Theresa Conley, Jeremiah  
Barry, and Kurt Morrison

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Case Number: 24SA132

**PETITIONERS’ ANSWER BRIEF**

## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

**The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).**

It contains 687 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

**The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).**

For each issue raised by the appellant, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

/s/ Suzanne Taheri  
Suzanne M. Taheri, #23411  
*Attorney for Petitioners*

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## INTRODUCTION

Initiatives #270 and #289 both offer definitions of strict liability to be applied to oil and gas operators for damages arising from personal injury, property damage or environmental harms. They are both subject of appeal in proceedings before this Court under § 1-40-107(2). Despite their similar structure and subject matter, Initiative #270 received a title and #289 did not. It is from this disparate treatment that this appeal arises.

## REPLY ARGUMENT

### **I. If Initiative #270 has a single subject, so must #289.**

Initiative #270 provides a new definition for strict liability. Both Respondent's rely upon the board's finding that the definition in #270 is, "consistent with dictionary definitions and common understanding of the term", so the board could properly set title. *See Respondent Title Board Opening Brief #270 p.2.*

The Board's approval of the use of the term in #270 goes to the merits of the proposal and should not be grounds for a finding of single subject in #270 any more than should the Board's displeasure with the definition in #289 should be grounds for a denial of single subject.

Potential consequences of the measure do not 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] interpret its language or predict its application if adopted by the electorate.” *Blake v. King (In re Title, Ballot Title, & Submission Clause 2007-2008 # 62)*, 184 P.3d 52, 59 (Colo. 2008) (quotations omitted).

“The 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.” *Cordero v. Leahy (In re Title, Ballot Title & Submission Clause for 2013-2014 #90)*, 328 P.3d 155, 160 (Colo. 2014) (quotations and alterations omitted); see also *Hedges v. Schler (In re Title, Ballot Title & Submission Clause for 2019-2020 #3)*, 442 P.3d 867, 870 (Colo. 2019).

If the Board was concerned about voter confusion over the terminology they could have easily set a title on both measures without using the term “strict liability”. Titles are routinely set without using the term in the definition, particularly if the term is not one commonly known to the electorate, as is the case here. Recognizing that proponents may make policy decisions related to definitions, the Court has found this can be accommodated in a title only where the

term will "adopt a new or controversial legal standard which would be of significance to all concerned" with the initiative. *In re Proposed Election Reform Amend.*, 852 P.2d 28, 34 (Colo. 1993). While new or controversial definitions have been found to be required in the title, this has never been used as a ground to deny title.

If anything, Initiative #270 is broader in application than #289. It changes the status quo not just with respect to the conduct of the oil and gas operator but also the conduct of a plaintiff. By eliminating a defense for contributory negligence, plaintiffs may receive full damages even when they are wholly responsible. For example, a plaintiff may ignore a no trespass sign, tear down a fence, and harm themselves while accessing the property of an oil and gas operation. They will still receive full damages under Initiative #270. This additional subject is coiled up in the folds and will be unknown to voters who may favor tighter standards for oil and gas operators but also believe plaintiffs should bear responsibility for their own conduct. Not only is this an additional subject, but it also appears nowhere in the title.

### **CONCLUSION**

There is no legal basis for the denial of title on Proposed Initiative 2023-2024 #289 on single subject grounds and the simultaneous finding of single subject

for Proposed Initiative 2023-2024 #270. Both initiatives address the definition of strict liability as it applies to oil and gas operations. Although the content of each initiative is different, their scope is the same. The Court should order the Title Board to render consistent findings for both initiatives.

Respectfully submitted this 15<sup>th</sup> day of May, 2024

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of May, 2024, a true and correct copy of the **RESPONDENTS MICHELE HAEDRICH AND STEVEN WARD'S OPENING BRIEF** was served via the Colorado Court's E-Filing System to the following:

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*Duly signed original on file at West Group*