

SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	DATE FILED: May 15, 2024 4:30 PM
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 #270 Petitioners: STEVEN WARD AND SUZANNE TAHERI v. Respondents: JESSICA GOAD AND ALICIA FERRUFINO-COQUEUGNIOT and Title Board: THERESA CONLEY, JEREMIAH BARRY, and KURT MORRISON	▲ COURT USE ONLY ▲
<i>Attorneys for Respondents</i> Martha M. Tierney, No. 27521 TIERNEY LAWRENCE STILES LLC 225 E. 16 th Street, Suite 350 Denver, CO 80203 Telephone: 303-356-4870 Email: mtierney@tls.legal	Case No.: 2024SA132
<p style="text-align: center;">RESPONDENTS' ANSWER BRIEF IN SUPPORT OF PROPOSED INITIATIVE 2023-2024 #270</p>	

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 1634 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_____

TABLE OF CONTENTS

Page(s)

SUMMARY OF ARGUMENT.....1

ARGUMENT.....3

 I. Initiative #270 Has a Single Subject3

 II. The Title Board Set a Clear Title That Accurately Sets forth the
 Central Features of the Measure.....5

CONCLUSION.....6

TABLE OF AUTHORITIES

Page(s)

CASES

In re Initiative for 2013-2014 #90,
2014 CO 63 4, 5, 6

In re Initiative for 2013-2014 #76,
2014 CO 524

In re Initiative for 2007-2008 #62,
184 P.3d 52 (Colo. 2008).....5

STATUTES

§ 1-40-106(3)(b), C.R.S.5

CONSTITUTIONS

Colo. Const. Art. V, §1(5.5).....4

Jessica Goad and Alicia Ferrufino-Coqueugniot (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 #270 (“Initiative #270”).

SUMMARY OF THE ARGUMENT

The Title Board properly exercised its broad discretion in setting title on Initiative #270. Initiative #270 contains a single subject: holding oil and gas operators strictly liable for damages resulting from oil and gas operations. The remaining provisions, including the definition of strict liability are implementing and enforcement details that flow from the measure’s single subject.

Petitioners argue not that Initiative #270 violates the single subject requirement, but instead, that if Initiative #270 has a single subject and it includes a definition of “strict liability,” then their competing measure, Initiative #289, should also be found to have a single subject. The Title Board, however, used its broad discretion and rejected Petitioners’ Initiative #289 because it could not set a title articulating a clear single subject. Initiative #189 created a new definition of “strict liability” requiring gross negligence or willful misconduct – the antitheses of the common understanding and dictionary definitions of the term. Because

Initiative #289's definition of "strict liability" is contrary to the common understanding and dictionary definitions and undermines the initiative's stated purpose, while Initiative #270's definition is necessarily and properly connected to Initiative #270's purpose, the Court should uphold the Title Board's single subject determination on Initiative #270.

Petitioners' clear title arguments are unpersuasive. Petitioners object that the title fails to inform voters that the measure imposes strict liability regardless of the exercise of reasonable care or adherence to industry best practices. That is incorrect. The title advises voters and petition signers that fault, negligence, or intent will not be considered when awarding damages that result from oil and gas operations under 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.

There is no basis to set aside the Title, and the decision of the Title Board should be affirmed.

ARGUMENT

I. Initiative #270 Has a Single Subject.

In their Opening Brief, Petitioners argue that if the definition of “strict liability” in Initiative #270 satisfies the single subject requirement, then the definition of “strict liability” in Initiative #289 does as well. *Pet. Op. Br.* at 5. This argument fails. First, whether Initiative #270 has a single subject should not depend on what the Title Board decides on Initiative #289. Second, Petitioners ignore the Title Board’s explanation for its decision to find a single subject on Initiative #270 and reject Initiative #289 on single subject grounds.

Contrary to Petitioners’ argument, Initiative #270 does not redefine the meaning of strict liability. The definition of strict liability in Initiative #270 is “liability without regard to fault, negligence, or intent.” R. 2. As explained in Respondents’ Opening Brief and in the Title Board’s Opening Brief, this definition is consistent with dictionary definitions and the ordinary meaning and common understanding of the term.

In contrast, Petitioners redefine “strict liability” in Initiative #289 to mean the exact opposite of all these definitions and the inverse of the common understanding of the term by adding a requirement of “gross negligence or willful misconduct” to the definition.

<https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/filings/2023-2024/289Final.pdf>. Petitioners' argument that both definitions are connected to the central purpose of each initiative, (notwithstanding that this is an admission that Initiative #270 contains a single subject), ignores the Title Board's considerable discretion to determine that it lacked jurisdiction to set a title for Initiative #289, because it could not set a title that clearly expressed a single subject given the extreme redefinition of the term "strict liability." The Title Board's determination is consistent with the Colorado constitution, which explicitly directs the Title Board that "[i]f a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls." Colo. Const., art. V, § 1(5.5)

Because Initiative #270 "tends to affect or carry out one general objective or purpose," it "presents only one subject," and the definition of strict liability is a "provision[] necessary to effectuate the purpose of the measure" and is "properly included within its text." *In re Initiative for 2013-2014 #90*, 2014 CO 63, ¶ 11. 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*

Initiative for 2013-2014 #76, 2014 CO 52, ¶ 8. Initiative #270 satisfies the single subject requirement.

II. The Title Board Set a Clear Title That Accurately Describes the Central Features of the Measure.

In their Opening Brief, Petitioners erroneously contend that the title for Initiative #270 is misleading because it fails to inform voters that the measure “imposes liability regardless of the exercise of reasonable care or adherence to industry best practices.” *Pet. Op. Br.* at 6. Yet, the Title Board set a title that advises voters and petition signers that the measure “hold[s] any oil and gas operator, owner, or producer strictly liable for any damages including personal injury, property damage, or environmental harm that result from oil and gas operations without regard to fault, negligence, or intent.” This language alerts voters and readers of petitions that fault, negligence, or intent will not be considered when awarding damages that result from oil and gas operations under the measure.

Thus, the Title Board exercised its discretion to craft a title that seeks to avoid “public confusion,” is “brief” and “unambiguously states the principle of the provision sought to be added, amended, or repealed.” §1-40-106(3)(b), C.R.S. 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. “While titles must

be fair, clear, accurate and complete, the Title Board is not required to set out every detail of an initiative.” *In re Title, Ballot Title, & Submission Clause for 2007-2008 #62*, 184 P.3d 52, 60 (Colo. 2008). The Court will reverse the title set by the Board “only if a title is insufficient, unfair, or misleading.” *In re 2013-2014 #90*, 2014 CO 63, ¶ 8. The title for Initiative #270 satisfies the clear title test.

CONCLUSION

The Proponents respectfully request the Court to affirm the actions of the Title Board regarding Proposed Initiative 2023-2024 #270.

Respectfully submitted this 15th 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 Respondents

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May 2024 a true and correct copy of the foregoing **RESPONDENTS' ANSWER BRIEF IN SUPPORT OF PROPOSED INITIATIVE 2023-2024 #270** was filed and served via the Colorado Courts E-Filing System to the following:

Suzanne Taheri
West Group
C/O West Group
6501 E. Belleview Ave
Suite 375
Denver, CO 80111
st@westglp.com
Attorneys for Petitioners

Michael Kotlarczyk
Assistant Solicitor General
Talia Kraemer
Assistant Attorney General
Colorado Attorney General's Office
1300 Broadway, 6th Floor
Denver, CO 80203
Mike.kotlarczyk@coag.gov
Talia.kraemer@coag.gov
Attorneys for the Title Board

s/Martha M. Tierney
