

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED: May 1, 2024 3:56 PM</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Setting Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #289 (“Strict Liability for Damages from Oil and Gas Operations”) Petitioners: Suzanne Taheri and Steven Ward v. Title Board: Theresa Conley, Jeremiah Barry and Kurt Morrison</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorney for Petitioners: Suzanne M. Taheri, #23411 WEST GROUP LAW & POLICY 6501 E. Belleview Ave, Suite 375 Englewood, CO 80111 Phone Number: (303) 263-0844 Email: st@westglp.com</p>	<p>Case Number:</p>
<p style="text-align: center;">PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2023-2024 #289 (“STRICT LIABILITY FOR DAMAGES FROM OIL AND GAS OPERATIONS”)</p>	

Petitioners Suzanne Taheri and Steven Ward, registered electors in Arapahoe County, Colorado, through undersigned counsel, hereby petition this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting

Board with respect to the denial of title setting on the grounds that Initiative 2023-2024 #289 (“Strict Liability for Damages from Oil and Gas Operations”) does not constitute a single subject.

STATEMENT OF THE CASE

A. Procedural history of Proposed Initiative 2023-2024 #289

Suzanne Taheri and Steven Ward (“Proponents”) submitted proposed Initiative 2023-2024 #289 (“Initiative #289”). A review and comment hearing was held before representatives of the Offices of Legislative Council and Legislative Legal Services on April 5, 2024. Thereafter, Proponents submitted final versions of the Initiative #289 to the Secretary of State for purposes of submission to the Title Board.

A Title Board hearing was held on April 17, 2024, at which time the Board denied title setting on the grounds that the initiative contains multiple subjects and the Board lacks jurisdiction to set title. On April 23, 2024, Petitioners filed a Motion for Rehearing challenging the Board’s single subject determination and requesting that the Board reverse its initial decision and set title for Initiative #289.

The rehearing was held on April 25, 2024, at which time the Proponents’ Motion for Rehearing was denied in its entirety.

B. Jurisdiction

Petitioners are entitled to review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioners timely filed the Motion for Rehearing with the Title Board. See C.R.S. § 1-40-107(1). Additionally, Petitioners timely filed this Petition for Review within seven days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of: (1) the draft, amended, and final version of the initiative filed by the Proponents; (2) the Motion for Rehearing filed by the Petitioners; and (3) the ruling on the Motion for Rehearing. Petitioners believe that the Title Board erred in denying the Motion for Rehearing and refusing to set a ballot title on single subject grounds. The matter is properly before this Court.

GROUND FOR APPEAL

The Title Board's single subject determination is inconsistent with the Board's decision for a similar initiative (Proposed Initiative 2023-2024 #270 "Oil and Gas Operations Strict Liability for Damages") for which the Board set title both at the initial hearing and at the rehearing.

Both Proposed Initiative #289 and Proposed Initiative #270 modify the definition of strict liability as it applies to oil and gas operations, but they do so in

opposite manners. If Proposed Initiative #270 is a single subject, then Proposed Initiative 2023-2024 #289 must also be a single subject¹.

The following is an advisory list of the issue to be addressed in Petitioners' brief:

1. Whether the Title Board erred by refusing to set a ballot title for Proposed Initiative 2023-2024 #289 on the grounds that the initiative contains multiple subjects.
2. Whether the Title Board erred in determining that an initiative which expands the definition of strict liability (Initiative #270) is a single subject while simultaneously holding that a similarly structured initiative which modifies the definition of strict liability is a single subject.

PRAYER FOR RELIEF

Petitioners respectfully request that, after consideration of the parties' briefs, this Court determine that Proposed Initiative 2023-2024 #289 constitutes a single subject and remand the initiative to the Title Board for title setting.

¹ While it is not the subject of this Petition for Review, Petitioners filed a separate Petition for review of the Title Board's single subject finding on Proposed Initiative 2023-2024 #270 which was filed for title setting by different proponents. Petitioners maintain that Proposed Initiative 2023-2024 #289 constitutes a single subject but maintain strongly that because both proposed initiatives redefine "strict liability" as it relates to oil and gas operations, the single subject determination must be the same for each.

Respectfully submitted this 1st day of May, 2024

s/Suzanne Taheri

Suzanne M. Taheri, #23411

WEST GROUP LAW & POLICY

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Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 2024, a true and correct copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2023-2024 #289 (“STRICT LIABILITY FOR DAMAGES FROM OIL AND GAS OPERATIONS”)** was served via the Colorado Court’s E-Filing System to the following:

Michael Kotlarczyk
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203
Counsel for the Title Board

/s/ Suzanne Taheri _____

Suzanne Taheri

Duly signed original on file at West Group

DATE FILED: May 1, 2024 3:56 PM



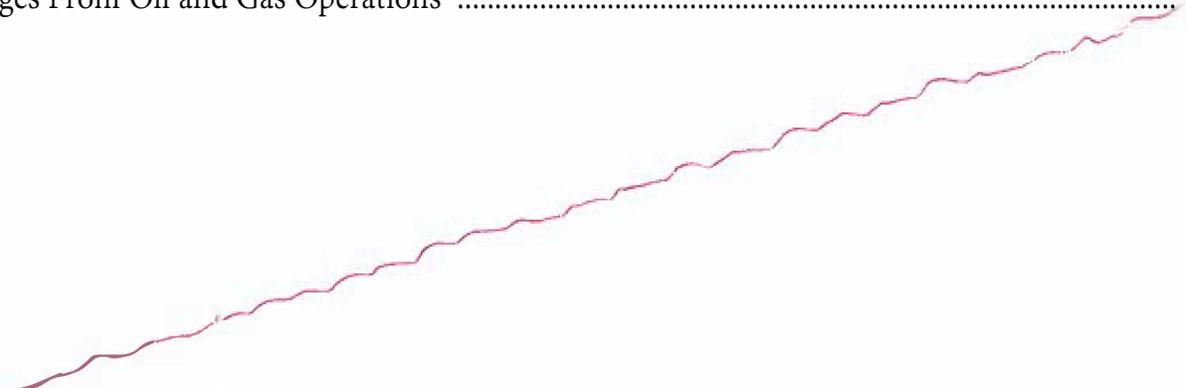
STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal summary, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2023-2024 #289 'Strict Liability for Damages From Oil and Gas Operations'"



.....**IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado,
at the City of Denver this 29th day of April, 2024.

Jena Griswold

SECRETARY OF STATE



2023-2024 #289 - Final

Be it Enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 34-60-114.1 as follows:

34-60-114.1. Colorado oil and gas operations public health and safety act.

(1) **Purposes and findings.** THE PEOPLE OF THE STATE OF COLORADO HEREBY FIND AND DECLARE THAT:

(a) THE PURPOSE OF THIS SECTION IS TO ENSURE THE PROTECTION OF PUBLIC HEALTH, SAFETY, PROPERTY, WILDLIFE AND THE ENVIRONMENT BY ESTABLISHING STRICT LIABILITY FOR DAMAGES CAUSED BY OIL AND GAS OPERATIONS IN THE STATE OF COLORADO, INCLUDING EMISSIONS OF HARMFUL AIR POLLUTANTS, HARM TO WILDLIFE OR HABITAT, SPILLS OR RELEASES OF TOXIC CHEMICALS, FIRES, EXPLOSIONS, OR EARTHQUAKES; AND

(b) IT IS NECESSARY TO HOLD ANY OPERATOR, OWNER, OR PRODUCER ACCOUNTABLE FOR ANY HARM CAUSED TO PUBLIC HEALTH, SAFETY, PROPERTY, WILDLIFE OR THE ENVIRONMENT BY OIL AND GAS OPERATIONS AND TO PROMOTE RESPONSIBLE PRACTICES WITHIN THE INDUSTRY.

(2) **Definition.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "STRICT LIABILITY" OR "STRICTLY LIABLE" MEANS LIABILITY WHERE AN OPERATOR, OWNER, OR PRODUCER HAS ACTED WITH GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(3) **Strict Liability for Damages.**

(a) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ANY OPERATOR, OWNER, OR PRODUCER IS STRICTLY LIABLE FOR ANY DAMAGES, INCLUDING PERSONAL INJURY, PROPERTY DAMAGE, AND ENVIRONMENTAL HARM, RESULTING FROM OIL AND GAS OPERATIONS.

(b) STRICT LIABILITY UNDER THIS SECTION APPLIES WHERE AN OPERATOR, OWNER, OR PRODUCER HAS BEEN FOUND TO HAVE ACTED WITH GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

SECTION 2. Effective date. This Act takes effect upon official declaration of the governor and is self-executing.

Ballot Title Setting Board

Proposed Initiative 2023-2024 #289¹

Hearing April 17, 2024:

Title setting denied on the grounds that the initiative contains multiple subjects and the Board lacks jurisdiction to set title (3-0).

Board Members: Theresa Conley, Kurt Morrison, Jeremiah Barry

Hearing adjourned 8:17 P.M.

¹ Unofficially captioned “**Strict Liability for Damages From Oil and Gas Operations**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Ballot Title Setting Board

Proposed Initiative 2023-2024 #289¹

Hearing April 17, 2024:

Title setting denied on the grounds that the initiative contains multiple subjects and the Board lacks jurisdiction to set title (3-0).

Board Members: Theresa Conley, Kurt Morrison, Jeremiah Barry

Hearing adjourned 8:17 P.M.

Rehearing April 25, 2024:

Motion for rehearing (Proponents) denied in its entirety (3-0).

Board members: Theresa Conley, Kurt Morrison, Jeremiah Barry

Hearing adjourned: 3:10 P.M.

¹ Unofficially captioned “**Strict Liability for Damages From Oil and Gas Operations**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

COLORADO TITLE SETTING BOARD

Suzanne Taheri and Steve Ward
Designated Representatives of Initiative 2023-2024 #289

MOTION FOR REHEARING ON INITIATIVE 2023-2024 #289

Suzanne Taheri and Steven Ward, registered electors of the State of Colorado and proponents of Initiative 2023-2024 #289 (“Initiative #289”) object to the Title Board’s finding that the measure does not constitute a single subject which resulted in the Board’s refusal to set title.

The Title Board considered Initiative #289 on April 17, 2024. The statutory section proposed by the Initiative is short and straightforward. It defines the term “strict liability” for purposes of the proposed new section.

The Title Board determined that imposing a strict liability standard for oil and gas operations and defining “strict liability” in a way that is more limited than its common usage constitutes two separate subjects.

The Proponents disagree with the Title Board’s action. Statutes and initiatives frequently define the terms used therein, which may differ from the common usage of the same words.¹ Such definitions do not constitute a separate subject. For example, the Colorado Supreme Court found that an “expansive” definition of a commonly used term that was necessarily and properly connected to the central purpose of the measure did not create a separate subject.²

Furthermore, although a statutory definition differs from ordinary usage “the differences between the definitions .. do not render the statute unconstitutionally vague.”³

The definition of “strict liability” in Initiative #289 is narrower than the meaning of the commonly used term, but it is necessarily and properly connected to the central purpose of the initiative as it establishes the liability for certain harm caused by oil and gas operations. Therefore, defining the term “strict liability” in a way that is more limited than its common usage does not constitute a second subject.

¹ See e.g. *Griego v. People*, 19 P.3d 1, 7 (Colo. 2001); citing *Palmer v. People*, 964 P.2d 524, 526 (Colo. 1998); *The Pro's Closet, Inc. v. City of Boulder*, 457 P.3d 763, 767 (court used statutory definition that was not in line with traditional understanding of the term).

² *Bentley v. Mason (In re Title Ballot Title & Submission Clause for 2015-2016 #63)*, 370 P.3d 628, 632; citing *Cordero v. Leahy (In re Title, Ballot Title & Submission Clause 2013-2014 #90)*, 328 P.3d 155, 161.

³ *People v. Boles*, 280 P.3d 55, 63 (Colo. App. 2011); citing *Dubois v. Abrahamson*, 214 P.3d 586, 587 (Colo. App. 2009).

Just as the Title Board held that it has jurisdiction to set a title for proposed initiative 2023-2024 #270, which also defines “strict liability” for its purposes, the Title Board has jurisdiction to set a title for this measure. The Board’s decision regarding Initiative #289 should be consistent with the Board’s single-subject decision regarding proposed initiative 2023-2024 #270.

Accordingly, the Proponents respectfully request that this Motion for Rehearing be granted and a rehearing set pursuant to C.R.S. § 1-40-107(1), because the Initiative contains a single subject and the Title Board has jurisdiction to set a title.

Respectfully submitted this 23rd day of April, 2024.

/s/ Suzanne Taheri

West Group
Attorney for Proponents



Initiative 289

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Summary

Date: April 15, 2024 **Fiscal Analyst:** Colin Gaiser (303-866-2677)

LCS TITLE: STRICT LIABILITY FOR DAMAGES FROM OIL AND GAS OPERATIONS

Fiscal Summary of Initiative 289

This fiscal summary, prepared by the nonpartisan Director of Research of the Legislative Council, contains a preliminary assessment of the measure's fiscal impact. A full fiscal impact statement for this initiative is or will be available at leg.colorado.gov/bluebook. This fiscal summary identifies the following impact.

State revenue and expenditures. By making oil and gas operators, owners, and producers strictly liable for damages from oil and gas operations, the Judicial Department will have an increase in revenue and expenditures from additional civil case filings. The measure will increase the number of plaintiffs seeking damages from oil and gas companies, and the increase the scope of these types of lawsuits, resulting in additional workload for the trial courts.

Economic impacts. To the extent this measure increases legal action against oil and gas operators, owners, and producers, the initiative may lead to higher costs or reduced activity in the oil and gas sector. This could decrease employment and investment in the industry