

COLORADO SUPREME COURT

2 East 14th 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 #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

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Case Number: 24SA133

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 555 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
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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 #289 provides a new definition for strict liability. In support of the denial of #289 on single subject grounds, both Respondent's rely upon the theory that the definition of strict liability in #289 does not track with its commonly applied meaning and would cause voter confusion. *See Respondent Title Board's Opening Brief, p. 8.*

The Board's disapproval of the use of the term goes to the merits of the proposal and should not be grounds for a finding #289 lacks a single subject any more than should the Board's approval of the definition in #270 should be grounds for a finding 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 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 a title that must include this content 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). Disapproval as to the content of a definition has never been used by this Court as a ground to deny 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 intent and scope is the same. The Court should order the reverse the finding of the Title Board and find that Initiative #289 contains a single subject.

Respectfully submitted May 15, 2024,

s/Suzanne Taheri
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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2024, a true and correct copy of the **PETITIONERS' ANSWER 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