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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 #290 'Preserve Air Quality Control Commission Regulation'"

[Red scribble]

.....**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



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

SECTION 1. Declaration of the People of Colorado

(1) The People of Colorado hereby find and declare that:

(a) In December 2023, the Air Quality Control Commission (“Commission”) passed a nation leading, innovative, first of its kind rule to achieve fast and deep reductions of nitrogen oxides (“NOx”) from oil and gas operations in the Denver Metro Front Range 8-hour ozone nonattainment area during “ozone season,” which lasts from May to September (“the NOx Reduction Rule”);

(b) The Commission’s rule was in response to a directive from the Governor in March 2023 to establish “the most ambitious rule in Colorado’s history.” This directive set nonattainment area ozone season NOx reductions targets of 30% by 2025 and 50% by 2030.

(c) The Air Pollution Control Division and numerous stakeholders spent nearly a year developing the NOx Reduction Rules, which are expressly designed to ensure the NOx reduction targets will be met;

(d) The rule encourages technological innovation and evolution and will drive deep and fast NOx reductions while ensuring Colorado rules are compliant with federal law; and

(e) This ballot initiative preserves the Commission’s groundbreaking December 2023 rule, avoids the potential for competing and conflicting mandates that might actually impede progress, and gives the NOx Reduction Rules the necessary time to work unless and until the state determines the reduction targets will not be met.

SECTION 2. In Colorado Revised Statutes, 25-7-111, **add** (2.5) as follows:

25-7-111. Administration of air quality control programs - directive - prescribed fire - review.

(2.5)(a) AS USED IN THIS SUBSECTION (2.5):

(I) “NOX” MEANS NITROGEN OXIDE.

(b) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE AIR POLLUTION CONTROL DIVISION SHALL NOT IMPLEMENT ITS AIR QUALITY CONTROL PROGRAM CREATED IN THIS ARTICLE 7, AND THE ENERGY AND CARBON MANAGEMENT COMMISSION SHALL NOT IMPLEMENT ITS REGULATORY PROGRAM CREATED IN TITLE 34, ARTICLE 60, INCLUDING ISSUING ANY PERMIT, ENFORCING ANY EMISSION BUDGET OR OTHER LIMIT, OR PROPOSING ANY RULES, IN A WAY THAT IS INCONSISTENT WITH OR DIFFERENT FROM THE RULES THAT THE COMMISSION PASSED ON DECEMBER 15, 2023, CODIFIED AT 5 CCR 1001-9, PART B, SEC. VI.E, "USE AND OPERATIONAL RESTRICTIONS FOR DRILLING, PRE-PRODUCTION, AND PRODUCTION OPERATIONS" AND 5 CCR 1001-30, PART B, SEC. I.D.6, "(STATE ONLY) ADDITIONAL REQUIREMENTS FOR INTERNAL COMBUSTION ENGINES" UNLESS AND UNTIL THE AIR POLLUTION CONTROL DIVISION MAKES A FORMAL, WRITTEN FINDING THAT, COLLECTIVELY, UPSTREAM OIL AND GAS OPERATORS IN THE OZONE NONATTAINMENT AREA HAVE NOT MET OR WILL NOT MEET THE 2030 TARGET OF A FIFTY PERCENT NOX REDUCTION FROM THE 2017 BASELINE USED IN THE STATE IMPLEMENTATION PLAN.

Ballot Title Setting Board

Proposed Initiative 2023-2024 #290¹

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes concerning the rules governing nitrogen oxide emissions adopted by the state on December 15, 2023, and, in connection therewith, prohibiting the state from implementing its regulatory programs in a way that is inconsistent with the rules or changing the rules without a written finding that collectively oil and gas operators in the Denver metro front range will not reduce the nitrogen oxide emissions by 50% by 2030.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes concerning the rules governing nitrogen oxide emissions adopted by the state on December 15, 2023, and, in connection therewith, prohibiting the state from implementing its regulatory programs in a way that is inconsistent with the rules or changing the rules without a written finding that collectively oil and gas operators in the Denver metro front range will not reduce the nitrogen oxide emissions by 50% by 2030?

Hearing April 17, 2024:

Single subject approved; staff draft amended; titles set.

Board members: Theresa Conley, Jeremiah Barry, Kurt Morrison

Hearing adjourned 8:47 P.M.

¹ Unofficially captioned “**Preserve Air Quality Control Commission Regulation**” 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 #290¹

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes concerning the rules governing nitrogen oxide emissions from oil and gas operations adopted by the state in December 2023, and, in connection therewith, prohibiting the state from implementing its regulatory programs in a way that is inconsistent with the rules or changing the rules without a written finding that collectively oil and gas operators in the Denver metro front range will not reduce the nitrogen oxide emissions by 50% by 2030 as set by 2017 baseline emissions established in the state air pollution implementation plan.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes concerning the rules governing nitrogen oxide emissions from oil and gas operations adopted by the state in December 2023, and, in connection therewith, prohibiting the state from implementing its regulatory programs in a way that is inconsistent with the rules or changing the rules without a written finding that collectively oil and gas operators in the Denver metro front range will not reduce the nitrogen oxide emissions by 50% by 2030 as set by 2017 baseline emissions established in the state air pollution implementation plan?

Hearing April 17, 2024:

Single subject approved; staff draft amended; titles set.

Board members: Theresa Conley, Jeremiah Barry, Kurt Morrison

Hearing adjourned 8:47 P.M.

Rehearing April 25, 2024

Motion for rehearing (Goad) was granted only to the extent the Board made changes to the title (3-0).

Board members: Theresa Conley, Jeremiah Barry, Kurt Morrison

Hearing adjourned 4:55 P.M.

¹ Unofficially captioned “**Preserve Air Quality Control Commission Regulation**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

COLORADO TITLE SETTING BOARD

**IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR PROPOSED INITIATIVE 2023-2024 #290**

MOTION FOR REHEARING ON PROPOSED INITIATIVE 2023-2024 #290

On behalf of Jessica Goad, registered elector of the State of Colorado, the undersigned counsel hereby submits to the Title Board this Motion for Rehearing on Proposed Initiative 2023-2024 #284 (“Initiative #284”) and as grounds therefore state as follows:

I. THE TITLE SET BY TITLE BOARD AT APRIL 17, 2024 HEARING

On April 17, 2024, the Title Board set the following ballot title and submission clause for Initiative #290:

A change to the Colorado Revised Statutes concerning the rules governing nitrogen oxide emissions adopted by the state on December 15, 2023, and, in connection therewith, prohibiting the state from implementing its regulatory programs in a way that is inconsistent with the rules or changing the rules without a written finding that collectively oil and gas operators in the Denver metro front range will not reduce the nitrogen oxide emissions by 50% by 2030.

II. GROUND FOR REHEARING**A. The Initiative Impermissibly Contains Several Separate and Distinct Subjects in Violation of the Single Subject Requirement.**

Pursuant to Colo. Const. art. V, §1(5.5),

no measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title If 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.

See also 1-40-106.5, C.R.S. “[T]he Board may not set the titles of a proposed Initiative, or submit it to the voters, if the Initiative contains multiple subjects.” *Aisenberg v. Campbell (In re Title, Ballot Title & Submission Clause 1990-2000 #104)*, 987 P.2d 249, 253 (Colo. 2000).

The single subject requirement serves two functions. First, the single subject requirement “is intended to ensure that each proposal depends upon its own merits for passage.” *Johnson v.*

Curry (In re Title, Ballot Title & Submission Clause for 2015-2016 #132), 374 P.3d 460, 465 (Colo. 2016). Second – and as pertinent here – the single subject requirement is intended to “prevent surprise and fraud from being practiced upon voters caused by the inadvertent passage of a surreptitious provision ‘coiled up in the folds’ of a complex initiative.” *Id.* “If an initiative advances separate and distinct purposes, the fact that they both relate to the same general concept or subject is insufficient to satisfy the single subject requirement.” *Id.*

Initiative #290 contains more than one separate subject in violation of article V, section 1(5.5) of the Colorado Constitution, and section 1-40-106.5, C.R.S.

The measure requires that the rules governing nitrogen oxide adopted on December 15, 2023, must stand until and unless the Air Pollution Control Division makes a formal written finding that oil and gas operators in the ozone nonattainment area have not met or will not meet the 2030 NOx reduction target in the state implementation plan. But the reality is that the NOx rule is not going to be enough to get the state of Colorado out of nonattainment with federal ozone standards, and the state will need to require more of the oil and gas sector to meet federal Clean Air Act requirements. So by locking in the NOx rule, the measure will require the state to reduce other sources of NOx, or require the state to violate the Clean Air Act. These are separate subjects coiled up in the folds of the measure, about which voters will be surprised to learn should this measure pass.

These separate subjects are couched in a measure that suggests that industry is on track to reduce NOx emissions by 50% by 2030, AND that may be sufficient to comply with various emissions laws. But this is the classic “coiled up in the folds” scenario whereby the voting public will be affirmatively surprised to learn that the measure will force the state to reduce other sources of NOx or violate the Clean Air Act. *See, e.g., Johnson, supra; In re Title & Ballot Title & Submission Clause for Initiative 2001-2002 #43*, 46 P.3d 438, 446 (Colo. 2002).

The purpose of the single subject requirement is to “obviate the risk of ‘uninformed voting caused by items concealed within a lengthy or complex proposal’” *Id.* While the Initiative is not long, a measure can be “complex” without necessarily being “lengthy” – indeed a short and seemingly simple initiative, directed to a large and moderately complex body of law, can harbor the most pernicious surprises “coiled up in [its] folds.” Here, Initiative #290 brings all these dangers.

B. The Ballot Title and Submission Clause Is Misleading, and Does Not Correctly and Fairly Express Its True Intent and Meaning.

The title of the Initiative is misleading and does not correctly and fairly express the initiative’s true intent and meaning. Section 1-40-106(3)(b), C.R.S. provides:

In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a "yes" or "no" vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly express the true intent and meaning thereof, together with the ballot title and submission clause. . . .

Titles and submission clauses should "enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal." *In re Title, Ballot Title & Submission Clause for Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 242 (Colo. 1990). The purpose of reviewing an initiative title for clarity parallels that of the single-subject requirement: voter protection through reasonably ascertainable expression of the initiative's purpose. *See id.*

The Title for Initiative #290 does not apprise voters of how the measure changes the status quo with regard to compliance with federal ozone standards. Here, the title for Initiative #290 is one for which the general understanding of the effect of a "yes" or "no" vote will be unclear. See generally 1-40-106(3)(b). As a result, the title for Initiative #290 does not enable voters to make an informed choice because it does not correctly and fairly express its true intent and meaning.

III. CONCLUSION

Based on the foregoing, Jessica Goad requests a rehearing of the Title Board for Initiative 2023-2024 #290, because the initiative contains multiple subjects, the title is unclear and misleading to voters, and it fails to fairly express the initiative's true meaning and intent. As a result, the Title Board lacks jurisdiction to set a title and should reject the measure in its entirety.

Respectfully submitted this 24th day of April, 2024.

TIERNEY LAWRENCE LLC

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

ATTORNEYS FOR OBJECTOR JESSICA GOAD

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 24th day of April 2024, a true and correct copy of **MOTION FOR REHEARING ON PROPOSED INITIATIVE 2023-2024 #290** was filed and served on Proponents Michele Haedrich and Steven Ward, via email to their counsel of record as follows:

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

/s/ Martha M. Tierney



Initiative 290

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Summary

Date: April 15, 2024 **Fiscal Analyst:** Matt Bishop (303-866-4796)

LCS TITLE: PRESERVE AIR QUALITY CONTROL COMMISSION REGULATION

Fiscal Summary of Initiative 290

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 expenditures. The measure prohibits regulatory activity that is inconsistent with certain existing rules unless the Department of Public Health and Environment issues a finding that oil and gas operators will miss their nitrogen oxide emissions reduction target. Workload may increase in the department if such a finding is required.

Economic impacts. The measure has no direct impact on the state economy.