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| SUPREME COURT, STATE OF COLORADO<br><br>2 East 14th Avenue<br>Denver, Colorado 80203 | DATE FILED: May 14, 2024 6:45 PM |
| In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #292 ("Local Control Over Land Use")<br><br>**Petitioners** Kevin Grantham and Cheri Jahn,<br><br>v.<br><br>**Respondent:** Jessica Goad<br><br>and<br><br>**Colorado Ballot Title Setting Board:** Theresa Conley, Jason Gelender, and Kurt Morrison. | ▲ **COURT USE ONLY** ▲ |
| **Attorneys for Petitioners:**<br><br>Jason R. Dunn, #33011<br>David B. Meschke, #47728<br>Denver Donchez, #56761<br>Neil S. Sandhu, #56600<br>BROWNSTEIN HYATT FARBER SCHRECK LLP<br>675 15th St, Suite 2900<br>Denver, CO 80202<br>Tel: 303.223.1100<br>Fax: 303.223.1111<br>jdunn@bhfs.com; dmeschke@bhfs.com; nsandhu@bhfs.com; and ddonchez@bhfs.com | Case Number: 2024SA128 |

**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 4,388 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.

**In response to each issue raised, the appellee** must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

**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/ Jason R. Dunn*

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Petitioners Kevin Grantham and Cheri Jahn, through undersigned counsel, submit their Answer Brief in this original proceeding challenging the actions of the Colorado Ballot Title Setting Board on Proposed Initiative 2023-2024 #292 ("Local Control Over Land Use").

## SUMMARY OF THE ARGUMENT

Proposed Initiative #292 would provide a single, discrete change to land use law. It provides that if there is a conflict between local and state regulations or decisions on land use, the local action controls.[1] Initiative #292 does not itself alter any private parties' rights or responsibilities. The Initiative comes into play only if state and local governments promulgate conflicting regulations or decisions on land use. Given the Initiative's scope, the Title Board unanimously approved the measure on single-subject grounds at its initial hearing.

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[1] As stated in Petitioners' Opening Brief, Initiative #292 is nearly identical to two other measures Petitioners have proposed—Proposed Initiatives #291 and #293. Unlike Initiative #291, Initiatives #292 and #293 contain a carve-out for land use decisions related to water projects, and Initiative #293 also contains a carve-out for state regulations necessitated by federal law. Petitioners have also appealed the Title Board's decisions to deny Initiatives #291 and #293 on single-subject grounds.

The argument put forth by Respondent Goad in her motion for rehearing, and the argument that the Title Board adopted in denying jurisdiction at Initiative #292's rehearing, is that the measure violates the single-subject requirement because it might have broad effects on different industries. (*See* Pet. for Review, Ex. 1, at 9). As explained in Petitioners' Opening Brief, decades of precedent prohibits the Title Board from rejecting an initiative based on speculation over the initiative's potential for broad effects or impacts. As such, the Title Board's decision was erroneous.

Recognizing that the rationale adopted at the rehearing conflicts with single-subject precedent, the Title Board pivots in its Opening Brief to a new theory. Rather than focus on the potential effects of Initiative #292 (as it did in the rehearing), the Title Board now argues that the measure contains specific "disparate" provisions or subjects, even going so far as to list them – for the first time – in its brief. But this argument is likewise flawed. The Title Board cannot justify its decisions with post hoc rationalizations. And even if it could, its new arguments are unpersuasive.

In her Opening Brief, Respondent Goad also attempts to cover for the Title Board's flawed reasoning at the rehearing and argues that the Initiative promotes logrolling and voter surprise. Those arguments do not fit this measure, which is limited in its purpose and forthright in its text.

No theory—recycled or new—supports Initiative #292 containing multiple subjects. The Title Board's decision that the measure lacks a single subject must be reversed, and the Initiative remanded to Title Board to set a title.

## ARGUMENT

### I. The Title Board's single-subject arguments are improper and unpersuasive.

In its Opening Brief, the Title Board argues that Initiative #292 consists of unrelated provisions not necessarily or properly connected. But the Title Board did not rely on this argument below, and this Court should not give weight to this post-hoc rationalization on appeal. Even if the Court were to address this new argument, the argument does not withstand scrutiny.

#### A. The Title Board's arguments are post-hoc rationalizations.

At the rehearing, Title Board members Conley and Morrison

expressed concern about Initiative #292's potential effects. While Chair Conley recognized that the "plain language of [the measure] seems sort of narrow," she then stated that "[b]ut when . . . [Objector Goad's arguments] . . . are bringing up . . . *oh this could effect* . . . I don't know if I would have thought these other things would be included."[2]

Responding to these concerns, Petitioners emphasized that it would be reversable error for the Title Board to reject a measure over concerns about its potential effects. *See generally In re Title, Ballot Title and Submission Clause*, 1999-00 #256, 12 P.3d 246, 254 (Colo. 2000) ("We have never held that just because a proposal may have different effects . . . that it necessarily violates the single-subject requirement."). Petitioners subsequently pressed these two Title Board members to identify which provisions were unrelated to the rest of the measure, or what other subjects the provisions implicated. Neither of them identified the purported second subject. (Rehearing Audio 34:10). Ultimately, both

[2] Title Board Rehearing Audio 36:07 (emphasis added), *available at* https://csos.granicus.com/player/clip/456?view_id=1&redirect=true (hereinafter "Rehearing Audio").

members voted to reject Initiative #292 on single-subject grounds. (*See* Pet'rs' Opening Br., at 3–4). In doing so, they offered no other rationale for their opposition to Initiative #292.

In its Opening Brief, the Title Board pivots away from the justification provided at rehearing, implicitly acknowledging that the single-subject inquiry cannot turn on the Initiative's potential effects. (Title Board's Opening Br., at 5–6 (acknowledging that "the 'effects th[e] measure could have on Colorado . . . law if adopted by voters are irrelevant' to the single subject inquiry")). In its place, the Title Board has put forth a new argument in this briefing: that Proposed Initiative #292 violates the single-subject requirement because it is made up of several "discrete components" that implicate no fewer than six separate subjects. (*Id.*, at 8).

The Title Board's rationale on appeal is not only startlingly different than what it relied on at the rehearing, but it is simply an attempt at after-the-fact rationalization to justify a decision that was based exclusively on an impermissible basis, namely the possible effects of the measure. As a procedural matter, the Court should reject such

attempts and convey that the Title Board must, in the first instance, base its decision on constitutional grounds.

### B. Initiative #292 is not made up of disparate provisions.

For the first time on appeal, the Title Board contends that Initiative #292 contains no less than six disparate components:

- *"First,* [Initiative #292] would broadly house control over land use regulations and decisions with local governments."
- *"Second* it would prevent the state from imposing conflicting requirements and provides that should the state do so, they would be null and void."
- *"Third,* it would empower local governments to make land-use regulations without regard to state laws."
- *"Fourth,* and wholly separate, Initiative 292 provides that state governments and governmental entities such as regulatory agencies could not withhold permits or approvals once a local government approves land use regulations."
- *"Fifth,* Initiative 292 prohibits the state government from taking an adverse action in response to the local government's decision

or authority."

- *"Finally,* as the Title Board explained, the scope of regulations Initiative 292 would include was far-ranging,[3] including development regulations, energy regulations, housing regulations, zoning, approving plans and permitting, siting, and development agreements, as well as being exclusively rooted in the local government's plenary authority."

*Id.*

A closer look at the Title Board's list reveals it is merely splitting hairs. The Title Board's first three purported "subjects" are simply different ways of stating the measure's true single subject. Indeed, the subject of Initiative #292 is local control over land use decisions. The logical effect of this is that states are prevented from imposing conflicting requirements while local governments are empowered to make land use regulations without regard to conflicting state laws. The Title Board's

[3] To be clear, the Title Board did raise at the rehearing that Initiative #292 may have far-reaching effects. But, as discussed throughout this brief, this aspect has no bearing on whether the measure contains a single subject.

second and third "subjects" are merely recitations of *how* Initiative #292 works in practice.

As for the Title Board's fourth and fifth purported "subjects," the Title Board asserts that the State and regulatory agencies would be unable to withhold permits or approvals after a local government had approved the endeavor and that the State would be unable to take adverse action in response to a local government decision. (Title Board Opening Br., 8–9, 11). But a closer read of the argument reveals that both of these "subjects" simply relate to the effects of Initiative #292's implementation. Indeed, "subject" four is an example of "subject" five insofar as withholding a permit or approval contrary to a local government's granting of such approval is an "adverse action in response to a local government decision." The Title Board makes no attempt to establish how these purportedly separate "subjects" differ from one another because it cannot. These "subjects" are merely restatements of Initiative #292's essential functions.

This Court has consistently held that a measure does not violate the single subject requirement "merely because it spells out details

relating to its implementation." *Matter of Title, Ballot Title and Submission Clause for 2021-2022 #16*, 489 P.3d 1217, 1221 (Colo. 2021). For instance, this Court affirmed single subject on a measure that would have created a preschool program and imposed a tax on vaping to fund the program. *Matter of Title, Ballot Title, and Submission Clause for 2019-2020 #315*, 500 P.3d 363, 367–68 (Colo. 2020). Because the tax was necessary to fund the school program, the Court held that the two related to the same subject. *Id.* Similarly, Proposed Initiative #292's two implementing provisions—providing that state governments cannot withhold permits or approvals once approved by local government and prohibiting the State from taking "adverse action" in response to local governments' decisions—are at least as related as a vaping tax and a preschool program.

Likewise, in *Matter of Title, Ballot Title, and Submission Clause for 2015-2016* #63, this Court considered a measure that (1) redefined the legal status of local governments; (2) prioritized and subordinated rights under the Colorado Bill of Rights; (3) modified preemption law; and (4) created a cause of action to enforce the right to a healthy environment.

370 P.3d 628, 632 (Colo. 2016). This Court found that the measure had a single subject related to a right to a healthy environment, reasoning that the various components of the initiative creating the right, standing to enforce the right, and punitive damages for violating the right were all "tool[s] for its implementation" rather than separate subjects. *Id.* at 633.

Without being able to incorporate such "tools for implementation" into a proposed initiative, virtually all well-drafted and reasonably considered initiatives, and especially proposed constitutional measures, would be rejected on single-subject grounds. Such an overly restrictive rule would result in a Hobbesian choice for future initiative proponents. They would be forced to choose between (a) providing the necessary tools for implementation—but risk rejection on single-subject grounds; or (b) satisfying the single-subject criterion—but ultimately passing an ineffective law that is stripped of all implementation tools. The single-subject requirement was not meant to stymie the people's choice to implement policy through direct democracy. *See* C.R.S. § 1-40-101(1) (single-subject requirement, among others, not intended to "limit or abridge in any manner the powers reserved to the people"). Rather, "[t]he

initiative law favors placing matters before the voters," *Armstrong v. Davidson*, 10 P.3d 1278, 1281 (Colo. 2000), and this Court should not de facto deprive voters of "the guarantee of participation in the political process" through the initiative process, *Loonan v. Woodley*, 882 P.2d 1380, 1383 (Colo. 1994).

As is the case here, Initiative #292's components related to permits, approvals, and adverse actions, are simply tools for implementation to ensure that Initiative #292 functions as anticipated, rather than separate subjects as the Title Board suggests.

To reiterate, Initiative #292 would ensure that in the event of a conflict between state and local decisions or regulations on land use, the local action controls. Recognizing that state governments might circumvent the Initiative's provisions by denying the necessary permits, or by retaliating against local governments for their land use decisions or regulations, Petitioners included connected implementation tools: Section 17(3) (which prohibits the state from retaliating against local governments for their land use decision); and Section 17(4) (which prohibits the state from withholding the permits necessary to carry out

the local land use decision). These provisions are not separate from Initiative #292's goal of restoring the primacy of local decisions and regulations on land use—these provisions implement that very goal. *See In re 2019-2020 #315*, 500 P.3d at 367–68 (holding that a vaping tax is the same subject as a preschool program because the vaping tax is necessary to fund the preschool program).

### C. The Title Board erred by focusing on the effects of Proposed Initiative #292.

For its final point, and scattered elsewhere in its brief, the Title Board contests the measure's purported breadth. (Title Board Opening Br., at 8–11, 12–14). These concerns over "breadth" are recycled concerns about the measure's possible effects. Again, the Title Board erred by using Initiative #292's potential effects to find that it contains more than a single subject. Its rationale would force proponents to bring separate measures as to each industry if their proposal would impact primacy as to land use decisions.

At the outset, Petitioners emphasized that Initiative #292 does not itself alter any use of land; it provides merely that *if* there is a conflict, the local regulation or decision controls. It would be improper for this

Court to speculate about the industries that might be affected by local regulations or decisions on land use. *Matter of Title, Ballot Title and Submission Clause for 2019-2020 #3*, 442 P.3d 867, 870 (Colo. 2019) ("[T]o conclude that the initiative here comprises multiple subjects would require us to . . . suggest how it might be applied if enacted. As noted above, however, we are not permitted to do so.").[4] But the effects of Initiative #292 are what the Title Board bases its arguments on.

The Title Board's Opening Brief specifically argues that Initiative #292 might implicate different industries or infrastructure. (Title Board's

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[4] Title Board has filed multiple briefs with this Court this cycle taking the position that it should not speculate about the potential effects of an initiative. *See* Brief for Title Board at 12, *In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #197,* No. 2024SA93 (Colo. Apr. 24, 2024), *available at* https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/initiatives/2023-2024/24SA93/24SA93%20Title%20Board's%20Answer%20Brief.pdf; *see also* Brief for Title Board at 11, *In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #150*, No. 2024SA92 (Colo. Apr. 10, 2024), *available at* https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/initiatives/2023-2024/24SA92/Title%20Boards%20Opening%20Brief.pdf (arguing that concerns regarding "the potential effects and consequences of the measure, not the measure itself . . . does not show a violation of the single subject rule").

Opening Br., at 9–10, 12–13). It states that the measure might "impact[] different state regulatory functions, including mining, oil and gas, roads, highways, and bridges . . . ." (Title Board's Opening Br., at 10). The Title Board continues that the "potential impacts [include]" oil and gas, road constructions, mining, and other industries. (*Id.* at 13). These concerns about "impacts" are just speculation about the Initiative's potential effects, as applied. Indeed, to even get to these impacts, some sort of conflict would have to be created by either affirmative state or local action. To pass single subject, it should have been "enough that the provisions of [Initiative #292] are connected;" the measure's potential effects are a red herring. *See In re 1990-00#256*, 12 P.3d at 254.[5]

Stated differently, the Title Board's argument that Initiative #292 may implicate different industries requires improper speculation on the measure's future application and how it may interact with various laws and regulations. *See, e.g., In re Title, Ballot Title, & Submission Clause*

[5] Title Board's Opening Brief makes a passing reference to "logrolling" concerns. (Title Board Opening Br., at 12). To the extent Title Board argues that the Initiative attempts to logroll voters, Petitioners address that argument below. *See infa* § II.A.

*for 1999-2000 #235(a),* 3 P.3d 1219, 1225 (Colo. 2000) (the Court's "limited review of the Title Board's actions" does not allow it to "determine the future application of an initiative in the process of reviewing the action of the Title Board in setting titles for a proposed initiative" (emphasis added)); *Matter of Proposed Initiative On Parental Notification of Abortions For Minors*, 794 P.2d 238, 241 (Colo. 1990) ("Neither this court, nor the Board may go beyond ascertaining the intent of the initiative so as to interpret the meaning of the proposed language or suggest how it will be applied if adopted." (emphasis added)); *In re Title, Ballot Title, Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 645 (Colo. 2010) ("We do not determine the initiative's efficacy, construction, or future application, which is properly determined if and after the voters approve the proposal." (emphasis added)); *see also Matter of Title, Ballot Title & Submission Clause, & Summary Adopted Nov. 1, 1995, By Title Bd. Pertaining to a Proposed Initiative on Trespass-Streams with Flowing Water*, 910 P.2d 21, 27–28 (Colo. 1996) (upholding Board's decision not to include a statement in the title expressing the fiscal impact of potential equal protection lawsuits on the state in the

title because it would have required the Board "to speculate as to the effect of the equal protection clauses of the United States and Colorado Constitutions on the Initiative"). Speculating about a measure's potential legal application and effects is outside of the Title Board's and this Court's purview when assessing whether a measure contains a single subject.

As detailed in Petitioners' Opening Brief, even if Initiative #292 would directly affect multiple industries, that would not mean it implicates multiple subjects. (Pet'rs' Opening Br., at 12–18). For example, in *Matter of Title, Ballot and Submission Clause for 2013-2014 #90,* this Court considered a measure that would have impacted "public health, safety, welfare, and the environment" by expanding local governments' authority to enact laws regulating oil and gas development. 328 P.3d 155, 160 (Colo. 2014). The petitioners in that case argued that the measure contained multiple subjects because, in addition to expanding local government's authority to enact laws regulating oil and gas, it also would have (1) exempted local government when complying with certain provisions of the Colorado Constitution; (2) altered legal

standards used to determine the validity of local laws that conflict with state laws; and (3) deprived property owners of certain rights and protections. *Id.* But this Court found that the measure contained a single subject, noting that "any effect the Proposed Initiatives would have . . . does not constitute a separate subject." *Id.* at 161. Indeed, this Court reasoned that "[t]he effects this measure could have on Colorado . . . law if adopted by voters are irrelevant to our review of whether [the proposed initiative] and its Titles contain a single subject." *Id.* at 160 (*quoting In re Title, Ballot Title, Submission Clause for 2011-2012 No. 3*, 2012 CO 25, 274 P.3d 562, 578 n.2). This precedent forecloses the Title Board's concerns about the measure's alleged breadth.

It was error for the Title Board to fixate on the possible effects of the Initiative at the rehearing, and it would be error for this Court to sustain these concerns on appeal.

## II. Respondent Goad's arguments are unpersuasive.

Respondent Goad similarly argues that Initiative #292 contains separate subjects because it risks logrolling and voter surprise. (Resp't's

Opening Br., at 7–9). Both theories are commonly raised in appeals such as this one. Neither theory applies.

### A. Proposed Initiative #292 does not engage in logrolling.

The single-subject requirement protects against the danger of logrolling, which seeks to avoid the combining of distinct "subjects with no necessary or proper connection for the purpose of garnering support for the initiative from various factions—that may have different or even conflicting interests—[as such tactics might] lead to the enactment of measures that would fail on their own merits." *In re Initiative for 2011-2012 No. 3,* 274 P.3d at 566. Because Initiative #292 does not combine subjects with no necessary or proper connection, this ill of omnibus measures is inapplicable.

As explained throughout this appeal, Initiative #292 is dedicated to one goal: providing that in the face of conflict between a state and local regulation or decision on land use, the local action controls. (Pet'rs' Opening Br., at 8). The measure is not a collection of disparate provisions, cobbled together to elicit support from disparate voters. The best supporting evidence is that there is no provision that could be removed

to reduce the potential for logrolling because all of the provisions relate to the measure's central purpose of increasing local control over land use decisions or its implementation. Put differently, Initiative #292's provisions all "point in the same direction." *Matter of Title, Ballot Title and Submission Clause for 2021-2022 #16*, 489 P.3d at 1224 (*quoting In re 2017-2018 #4*, 395 P.3d 318, 322 (Colo. 2017)). If a voter is in favor of local control, they will support the measure; if they oppose local control of this nature, they will oppose the measure.

Moreover, the logrolling concerns identified by Respondent Goad are all related to the potential *effects* of Initiative #292, rather than the language of the measure itself. Indeed, Respondent Goad notes in the Opening Brief that the measure presents a logrolling risk because it may impact a laundry-list of areas. (Resp't's Opening Br., at 7-8). However, the central subject of Initiative #292 is to grant to local governments authority to make land use decisions when there is a conflict with state law, *not* how certain decisions may impact different types of industries or operations. Respondent's argument is equivalent to arguing that a tax

increase contains limitless subjects because the new revenue could potentially be spent on a multitude of government programs.

With respect to Initiative #292's potential effects, voters are intelligent enough to understand from the measure's plain language that while they may support one potential effect, a yes vote necessarily means that they support the measure's central purpose. Respondent Goad attempts to avoid this conclusion, arguing that there *must* be multiple subjects encompassed in Initiative #292 because not every supporter will be happy with every effect of the measure. (Resp't's Opening Br., at 8). But that overstates this Court's jurisprudence on logrolling and that is not how voters decide on whether to support ballot measures. *See In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 265,* 3 P.3d 1210, 1213 (Colo. 2000) (noting the Court's "limited role" in determining single subject).

Instead, the prohibition on logrolling requires that a measure not join "disconnected subjects into the measure for the purpose of garnering support from various factions." *In re Initiative for 2011-2012 No. 3,* 274 P.3d at 567. So long as the provisions are connected to the same subject,

the single-subject requirement allows measures that create various degrees of palatability amongst voters.

### B. <u>There is no risk of voter surprise.</u>

Contrary to Respondent Goad's argument in her Opening Brief, there is no risk of voter surprise. Although the single-subject requirement is designed to prevent voter surprise, this Court has explained that the concern is related to "the inadvertent passage of a surreptitious provision 'coiled up in the folds' of a complex initiative." *In re Title, Ballot Title, Submission Clause for 2011-2012 No. 3*, 274 P.3d at 566 (*quoting In re Proposed Initiative 2011-02 No. 43*, 46 P.3d 438, 442 (Colo. 2002)). As Petitioners explained in their Opening Brief, the voter-surprise inquiry asks whether one (or more) of the measure's *provisions*—not one if its potential *effects*—is so unconnected to the other provisions that voters would be surprised to learn that it was coiled in the folds of the measure. (Pet'rs' Opening Br., at 17–21). There is no risk of voter surprise with Initiative #292 because all of its provisions directly relate to the measure's core aim of ensuring that in the face of conflict between state and local regulations or decisions on land use, the local action controls.

(*Id.*) Further, Initiative #292's text is not "overly lengthy or complex." *In re Title, Ballot Title, Submission Clause for 2011-2012 No. 3*, 274 P.3d at 568. As to the measure's potential effects, voters can turn to the Bluebook or other sources to read more about them.

Still, Respondent Goad asserts "voters may vote for this measure thinking that they are standing up for local control [of land use], but be surprised to find out they have also limited the state from being able to regulate on" issues of land use. (Resp't's Opening Br., at 3). Respondent Goad argues both sides of the same coin and gives voters too little credit. Voters will know that by giving local governments more control, they necessarily will limit the role of the state if there is a conflict.

The Initiative simply provides that in a conflict between state and local regulations and decisions on land use, the local action controls. A voter would understand that by supporting the measure, they are limiting the state's power on issues of land use. Respondent's concerns about voter surprise are unfounded.

## III. The Title Board set an erroneous title.

This Court should remand Initiative #292 to the Title Board to correct the errors in the title. In its Opening Brief, Petitioners explained that should the Court set aside the Title Board's single-subject determination, then the Court should address Initiative #292's erroneous title. (Pet'rs' Opening Br., at 22–31). Neither the Title Board nor Respondent Goad addressed the flaws in the title in their Opening Briefs. Instead, both reiterate the point that *if* there is no single subject, there is no reason to set title. If the Court reverses the single-subject decision, Petitioners respectfully request that the Court remand the case to the Title Board with instructions to correct the title, as explained in their Opening Brief. (Pet'rs' Opening Br., at 23–31).

## CONCLUSION

Neither the Title Board nor Respondent Goad can agree on what Initiative #292's fatal flaw is. The Title Board argued below that Initiative #292 had impermissibly broad effects. Changing course, the Title Board now argues that the provisions are unrelated. For her part, Respondent Goad argues that the measure promotes logrolling and voter

surprise. All of these theories are common in appeals from the Title Board, but none fit this case. The Title Board's single-subject arguments are unpersuasive at best and impermissible at worst.

Petitioners respectfully request that this Court reverse the decision of the Title Board and remand with instructions to correct the erroneous title.

Respectfully submitted on May 14, 2024.

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## CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2024, I electronically filed a true and correct copy of the foregoing **PETITIONERS' ANSWER BRIEF** with the clerk of Court via the Colorado Courts E-Filing system which will send notification of such filing and service upon the following:

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