

COLORADO SUPREME COURT
2 East 14th Avenue
Denver, CO 80203

Original Proceeding Pursuant to
§ 1-40-107(2), C.R.S. (2023)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative
2023-2024 #290 (“Preserve Air Quality
Control Commission Regulation”)

Petitioner: Jessica Goad,

v.

Respondents: Suzanne Taheri and Steven
Ward,

and

Title Board: Theresa Conley, Jeremiah
Barry and Kurt Morrison.

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Case No. 2024SA135

THE TITLE BOARD’S OPENING BRIEF

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, I certify that:

The brief complies with the word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

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ISSUES ON REVIEW

- I. Whether 2023-2024 #290 contains a single subject.
- II. Whether the Title Board set a clear title for 2023-2024 #290.

STATEMENT OF THE CASE

Proposed initiative 2023-2024 #290 seeks to preserve the Air Quality Control Commission’s December 2023 rule regarding reduction in nitrogen oxide (“NO_x”) emissions from oil and gas operations in the Denver Metro Front Range. The measure further seeks to avoid the potential for competing and conflicting mandates and provide sufficient time for the December 2023 rule to be effective, unless and until the state determines target reductions will not be met. *See Record*, p 3.

The Title Board set a title on the measure at its April 17, 2024, hearing. *Id.* at 5. Petitioner Jessica Goad then timely filed a motion for rehearing under § 1-40-107. *Id.* at 9–11. Petitioner argued (1) that #290 contained multiple subjects because #290 alone will not bring the state into attainment with federal ozone standards, and (2) its title was

misleading for not addressing impacts on compliance with federal ozone standards.

The Board held the rehearing on April 25, 2024. *Id.* at 7. The Board granted the motion for rehearing only to the extent the Board made changes to the title. *Id.* The title is set 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.

Id. Petitioner Goad timely filed an appeal to this Court.

SUMMARY OF THE ARGUMENT

Petitioner Goad first objects to the Title Board's setting title for Initiative #290 on single subject grounds. She argues that Initiative #290 contains multiple subjects because separate subjects are "coiled up in the folds of the measure." Record, p 10. This concern of separate subjects stems from her view of the merits and potential effects of the

measure in regard to other state and federal air quality requirements.

But the effects and merits of a measure are not proper considerations in the single subject analysis. The measure states plainly its single subject: preserving the December 2023 Rule until it can be ascertained whether its goal has been, or will be, met.

Next, Goad argues that the title for Initiative #290 is misleading because voters may be surprised that the enactment of #290 may not result in a 50% reduction of NO_x by 2030 or attainment of federal ozone standards. *Id.* However, Initiative #290 is not misleading, as it does not hide any details of the measure. To the contrary, the plain text of the Initiative clearly states that its purpose is to preserve the 2023 December Rule until it can be ascertained whether its goal has been, or will be, met. Further, the title need not, and indeed should not, speculate as to potential effects of the measure.

ARGUMENT

I. The proposed initiative contains a single subject.

A. Standard of review and preservation.

The Title Board has jurisdiction to set a title only when a measure contains a single subject. *See* COLO. CONST. art. V, § 1(5.5). The Court will “overturn the Board’s finding that an initiative contains a single subject only in a clear case.” *In re Title, Ballot Title, & Submission Clause for 2021-2022 #16*, 2021 CO 55, ¶ 9 (quotations omitted). “In reviewing a challenge to the Title Board’s single subject determination, [the Supreme Court] employ[s] all legitimate presumptions in favor of the Title Board’s actions.” *In re Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 2014 CO 52, ¶ 8. In doing so, the Court does “not address the merits of the proposed initiative” or “suggest how it might be applied if enacted.” *In re Title, Ballot Title, & Submission Clause for 2019-2020 #3*, 2019 CO 57, ¶ 8. Nor can the Court “determine the initiative’s efficacy, construction, or future application.” *In re 2013-2014 #76*, 2014 CO 52, ¶ 8. Instead, the Court “must examine the initiative’s wording to determine whether it comports with the constitutional

single-subject requirement.” *In re 2019-2020 #3*, 2019 CO 57, ¶ 8. 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 2013-2014 #76*, 2014 CO 52, ¶ 8.

The Title Board agrees that Goad raised single subject objections in her motion for rehearing, though Goad’s petition for review does not specifically identify the issues she intends to raise. The petition states: “The issues to be addressed in this appeal are whether the Title Board erred in finding that Initiative #290 contains a single subject” Goad Pet. for Review, p 3. As Goad also made one argument in her Motion for Rehearing regarding the single subject, that “by locking in the NO_x rule, the measure will require the state to reduce other sources of NO_x, or require the state to violate the Clean Air Act,” the Board will address that argument as preserved. Record, p 10.

B. The measure satisfies single subject.

- 1. The merits and effects of #290 are improper considerations and do not change the single subject analysis.**

The anti-fraud purpose of the single subject rule protects against “voter surprise and fraud occasioned by 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 #45*, 2012 CO 26, ¶ 12 (quotations omitted). Goad argues that #290 contains separate subjects “coiled up in the folds of the measure,” and violates the single subject rule. Record, p 10.

Goad is correct that the measure preserves the December 2023 Rule until the Air Pollution Control Division makes a formal finding that oil and gas operators have met, or will not meet, NOx reduction targets. She argues, however, that the December 2023 Rule will not move the state out of nonattainment with federal ozone standards, and as a result of the measure, the state will still need to reduce other

sources of NO_x or else the measure will require the state to be in violation of the Clean Air Act.

“[T]he 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.” *In re Title, Ballot Title & Submission Clause for 2013-2014 #90*, 2014 CO 63 ¶ 17 (quotations and alterations omitted); *see also Matter of Title, Ballot Title and Submission Clause for 2019-2020 #3*, 442 P3d 867, 870 (Colo. 2019) (“[T]o conclude that the initiative here comprises multiple subjects would require us to read language into the initiative that is not there and to address the merits of that initiative and suggest how it might be applied if enacted. As noted above, however, we are not permitted to do so.”). Here, Goad takes issue with a policy decision that strikes at the merits and potential impact of the measure, not the subject of the measure. Whether or not the December 2023 rule is sufficient to bring the state out of nonattainment, #290 does not purport to be sufficient to bring the state out of nonattainment, as Goad asserts it does. Goad’s

concerns about ultimate Clean Air Act compliance do not turn the single subject of #290 into multiple subjects. Assertions about #290's potential effects or interactions with other policy choices do not change the single subject analysis, as the potential effects of a proposed initiative are not relevant to the single subject inquiry. Goad's argument goes straight to the merits of the initiative and speculates about how it might be applied if enacted, areas this Court has stated it will not consider in evaluating a single subject. *In re 2019-2020 #3*, 2019 CO 57, ¶ 8; *In re 2013-2014 #76*, 2014 CO 52, ¶ 8. A measure's reach is a policy choice at the heart of Colorado citizens' right to the initiative. *See* COLO. CONST. art. V, §1(2).

Because this argument concerns the potential effects and consequences of the measure, not the measure itself, it does not show a violation of the single subject rule or change the analysis here.

2. The measure does not contain hidden subjects coiled up in folds of a complex proposal.

Second, the measure does not contain hidden aspects “coiled up in the folds of a complex proposal.” *See In re 2013-2014 #76*, 2014 CO 52, ¶ 32.

Goad asserts the measure presents a “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 NO_x or violate the Clean Air Act.” Record, p 10. She also argues that the measure suggests the “industry is on track to reduce NO_x emissions by 50% by 2030.” *Id.*

Nowhere, however, does #290 purport to be the sole solution to Clean Air Act compliance. In fact, #290 directly contemplates the possibility of not succeeding with the goal of the December 2023 Rule and does not mention the Clean Air Act at all. *See* Record, p 7. To assert that voters will read #290 and assume that the measure alone will result in compliance with federal ozone standards and guarantees

reduction of NO_x emissions by 50% by 2030 does not follow logically from the plain text of #290 itself.

On a single page, #290 straightforwardly preserves the December 2023 Rule until such time there is a written finding that the target of 50% reduction in emissions by 2030 will not be met. This is not a complex initiative, and voter confusion is not a serious risk with #290. Where, as here, the “plain language” of a measure sets out its scope and applicability in a straightforward manner, there is no danger of hidden subjects. *See, e.g., In re Title, Ballot Title, & Submission Clause for 2013-2014 #89, 2014 CO 66, ¶ 19; In re Title, Ballot Title, & Submission Clause for 2011-2012 #3, 2012 CO 25, ¶ 20.*

Goad’s arguments do not overcome the deference this Court affords the Title Board in single subject determinations. This Court should thus affirm the Title Board’s single subject determination for #290.

II. The title for #290 satisfies the clear title standard.

A. Standard of review and preservation.

A measure's single subject "shall be clearly expressed in its title." COLO. CONST. art. V, § 1(5.5). "The Title Board's duty in setting a title is to summarize the central features of a proposed initiative." *In re Title, Ballot Title, & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 24. The Board "is given discretion in resolving interrelated problems of length, complexity, and clarity in setting a title and ballot title and submission clause." *Id.* The Court will reverse the title set by the Board "only if a title is insufficient, unfair, or misleading." *Id.* ¶ 8. The Court does not "consider whether the Title Board set the best possible title." *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 17.

Goad's petition for review does not specifically identify the issues she intends to raise, but states: "The issues to be addressed in this appeal are . . . whether the title as set by the Title Board is misleading." Goad Pet. for Review at 3. As Goad made one argument in her Motion

for Rehearing regarding the title, that “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,” the Board will address that argument as preserved. Record, p 11.

B. The title is not misleading.

A title is not misleading if “the title read as a whole fairly and accurately” describes the initiative. *In re Title, Ballot Title & Submission Clause for 2009-2010 #45*, 234 P.3d 642, 649 n.3 (Colo. 2010). This title does. Goad argues that the title for #290 does not explain to voters how the measure changes the status quo regarding compliance with federal ozone standards.

Goad’s argument hinges on a concern that the requirements of the rule preserved by #290 may not, alone, be sufficient to bring Colorado into compliance with federal ozone standards, and resultantly the state will need to put into place additional NO_x restrictions to be out of nonattainment, or else be in violation of the Clean Air Act. Goad asserts that omitting this information from the title is misleading to voters

because they will otherwise assume that #290 will result in ozone attainment levels. Goad's argument, notably, would likely result in a long and difficult to understand title that is in fact confusing to the public.

The title is not confusing or misleading; it serves the purposes intended by the single subject requirement. The title clearly conveys what the measure will do: preserve the NO_x rules until such time that it can be determined whether the NO_x reduction goals have been, or will be, met. This is sufficient to “prevent voter confusion and ensure that the title adequately expresses the initiative's intended purposes [such that] voters . . . should be able to ‘determine intelligently whether to support or oppose the proposal.’” *In re Matter of Title, Ballot Title & Submission Clause for 2015-2016 #156*, 2016 CO 56, ¶ 11.

The potential effects of a measure are better suited for inclusion in the Blue Book ballot guide, not in a summary of the central features of the initiative. “The Title Board's duty in setting a title is to summarize the central features of a proposed initiative; in so doing, the Title Board

is not required to explain the meaning or potential effects of the proposed initiative on the current statutory scheme.” *Matter of Title, Ballot Title & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 24, 328 P.3d 155, 162. The title is not required to include the details about every other state or federal statute or policy the measure might impact, as has been asserted here. “An appropriate general title [that] is broad enough to include all the subordinate matters considered is safer and wiser than an enumeration of several subordinate matters in the title.” *Parrish v. Lamm*, 758 P.2d 1356, 1363 (Colo. 1988).

Goad’s argument cannot overcome the deference this Court extends to the Board in reviewing titles. The Court should affirm the title set for #290.

CONCLUSION

The Title Board correctly determined that #290 contains a single subject and set an appropriate title. The Court should therefore affirm the title set by the Title Board on 2023-2024 #290.

Respectfully submitted on this 8th day of May, 2024.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S OPENING BRIEF** upon the following parties electronically via CCEF, at Denver, Colorado, this 8th day of May, 2024, addressed as follows:

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