

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2021-2022) Appeal from the Ballot Title Board</p> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #289</p> <p>Petitioners: Suzanne Taheri and Steve Ward,</p> <p>v.</p> <p>Title Board: Theresa Conley, Jeremiah Barry, and Kurt Morrison</p>	<p>▲ COURT USE ONLY ▲</p> <p>Case No. 2024SA133</p>
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<p>THE TITLE BOARD'S ANSWER BRIEF</p>	

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).

It contains 886 words.

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.

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REPLY ARGUMENT

I. Petitioners' single subject arguments fail.

A. Initiative #289's definition of "strict liability" is not comparable to an implementation detail, but rather is a separate subject.

Petitioners and the Title Board agree that one subject of Initiative #289 is to "impose a strict liability standard for any damages resulting from oil and gas operations." Pet. Op. Br., p 4. But Petitioners incorrectly contend that Initiative #289's definition of "strict liability," which encompasses only gross negligence or willful misconduct, is comparable to an implementation detail that does not constitute a separate subject. *Id.*

As Petitioners recognize, whether a definition constitutes a separate subject depends on whether it is "necessarily and properly connected to the central purpose of the measure . . ." Pet. Op. Br., p 6. Petitioners claim that Initiative #289's definition of strict liability is connected to the expressed purpose of Initiative #289 because it "establishes the liability for certain harm caused by oil and gas

operations.” Pet. Op. Br., p 6. But establishing “liability for certain harm” is not the expressed purpose of Initiative #289. Rather, as detailed in the Title Board’s Opening Brief, the purpose 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. Record, p 3. Further, Initiative #289 finds that it is “necessary to hold any operator, owner, or producer accountable for *any* harm” they cause. *Id.* (emphasis added).

Initiative #289’s definition of “strict liability” constitutes a second, separate subject because, by limiting liability to instances of gross negligence or willful misconduct, it is inconsistent with Initiative #289’s expressed purpose to establish a strict liability doctrine that would hold oil and gas operations liable for “any” harm they cause and thereby ensure the protection of the public health, safety and environment. Title Board Op. Br., pp 5-8. For this reason, and because Initiative #289’s definition of “strict liability” contradicts well-established

Colorado law, Initiative #289's multiple subjects would also cause voter confusion. *Id.*, pp 8-10.

The authorities cited by Petitioners do not militate otherwise. While Petitioners cite various authorities reflecting that initiatives and statutes may use defined terms, including ones that vary from common usage of the same words (Pet. Op. Br., pp 5-6), those authorities do not change the single subject requirement that defined terms must be properly connected to the central purpose of the measure.

Petitioners cite *In re Title, Ballot Title, and Submission Clause for 2015-2016 #63*, 370 P.3d 628 (Colo. 2016). Pet. Op. Br., p 6. But in that case, the initiative's expansive definition of "local governments" was determined to be "necessarily and properly connected to the initiative's purpose, which is to establish and broadly effectuate the right to a healthy environment for all Coloradans." 370 P.3d at 633.

Petitioners also cite *In re Title, Ballot Title, and Submission Clause*, 907 P.2d 586, 590 (Colo. 1995). Pet. Op. Br., pp 3-4. There, the Court found that the challenged initiative encompassed "a single, if

quite general” and “comprehensive” subject pertaining to the right to petition and associated procedures, and appropriately defined certain terms (“ballot title,” “district,” “petition,” and “shall”) in connection with that subject. 907 P.2d at 590-591, 593.¹

In short, the defined terms and subjects in each of the cases cited by Petitioners carried “out one general objective or purpose” and therefore did not violate the single subject requirement. *In re Title, Ballot Title & Submission Clause for 2017-2018 #4*, 2017 CO 57, ¶ 8.

In contrast, case law is clear that where defined terms promote a separate and distinct purpose from the central theme of a measure, those defined terms constitute a second subject. *In re Matter of Title, Ballot Title and Submission Clause for 2021-2022 #16*, 2021 CO 55, ¶¶ 35-41.

¹ Petitioners also suggest that a new definition that is likely to be controversial should be included in the title, citing *In re Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 242 (Colo. 1990). Pet. Op. Br., p 6. But that case did not involve a single subject challenge and was instead focused solely on whether the title correctly and fairly reflected the purpose of the proposed amendment. 794 P.2d at 241.

For the reasons detailed above and in the Title Board’s Opening Brief, Initiative #289’s definition of “strict liability” has a separate and distinct purpose from establishing a strict liability doctrine that would hold oil and gas operations liable for “any” harm they cause and thereby ensure the protection of the public health, safety and environment.

B. Initiative #270 does not affect the determination that Initiative #289 contains multiple subjects.

Petitioners argue that the Title Board must treat Initiative #289 and Initiative #270 identically, notwithstanding the differences in the content of their provisions. Pet. Op. Br., pp 2, 7. As stated in the Title Board’s Opening Brief, Initiative #270 defines “strict liability” consistent with the expressed purpose of the initiative and its common usage, and the initiative therefore presents no risk of voter confusion. For these reasons, the Title Board’s determination with regard to Initiative #270 does not change the conclusion that Initiative #289 contains multiple subjects. Title Board Op. Br., pp 10-12.

CONCLUSION

The Title Board correctly declined to set a title for Initiative #289 because it contains multiple subjects.

Respectfully submitted on this 15th 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 ANSWER BRIEF** upon the following parties electronically via CCEF, at Denver, Colorado, this 15th day of May, 2024, addressed as follows:

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