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COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203	
Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2024) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2023-2024 #270 ("Oil and Gas Operations Strict Liability for Damages") **Petitioners:** Steven Ward and Suzanne Taheri, **v.** **Respondents:** Jessica Goad and Alicia Ferrufino-Coqueugniot, **and** **Title Board**: Theresa Conley, Jeremiah Barry, and Kurt Morrison.	▲ **COURT USE ONLY** ▲ Case No. 2024SA132
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THE TITLE BOARD'S ANSWER 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).

It contains 754 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.

/s/ Talia Kraemer
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE(S)

CASES

STATUTES

OTHER AUTHORITIES

REPLY ARGUMENT

I. The Title Board's decisions on #270 and #289 are not inconsistent, and #270 contains a single subject.

Petitioners' Opening Brief does not affirmatively argue that the definition of "strict liability" in Proposed Initiative 2023-2024 #270 ("#270") introduces a second subject. Rather, they contend that "if" this Court finds that Proposed Initiative 2023-2024 #289 ("#289") contains multiple subjects—which Petitioners dispute—then #270 must as well. Pet. Br. at 3, 5. But Petitioners do not identify any way in which #270's strict liability definition relates to a different subject than the rest of the initiative, is incongruous with #270's other provisions, or fails to implement #270's central purpose. There is thus no basis to find that #270 violates the single-subject requirement. *See In re Title, Ballot Title & Submission Clause for 2013-2014 #76*, 2014 CO 52, ¶ 8; *In re Title, Ballot Title & Submission Clause for 2015-2016 #63*, 2016 CO 34, ¶¶ 8, 10.

Petitioners' entire argument is that #270 and #289 must be treated identically. But as discussed in the Title Board's Opening Brief,

the two initiatives differ fundamentally: whereas #270's definition of strict liability is consistent with the term's usual meaning, #289's is directly contrary to it, because it predicates liability on the existence of a culpable mental state, and indeed on one even *more* culpable than negligence. The definition therefore fails to implement #289's stated purpose of imposing "strict liability" for oil and gas operations, as that phrase is commonly understood, and poses a substantial risk of voter confusion. Neither is true of #270. The Title Board's single-subject determination should therefore be upheld.

II. The title set by the Board satisfies the clear title standard.

Petitioners assert that the title set by the Board "fails to clearly and accurately describe[]" #270 because it does not specify that the initiative imposes liability regardless of whether the actor exercises reasonable care or adheres to industry best practice. Pet. Br. at 7. But the title includes #270's exact definition of strict liability, by stating that the initiative would impose liability "without regard to fault, negligence, or intent." *See* Record at 3, 7. This adequately

"summarize[s] the central features of [the] proposed initiative." *In re Title, Ballot Title & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 24. Since the concepts of liability without regard to "reasonable care" or "adherence to industry best practice" are encompassed within that of liability without regard to fault, negligence, or intent, the title does not mislead voters or suffer from any material omission. *See In re 2015-2016 #63*, 2016 CO 34, ¶ 23.

Petitioners assert that the title must include these additional details because "strict liability . . . does not have one universally applicable established definition." Pet. Br. at 6. But they do not identify any discrepancy among authorities as to whether acting with reasonable care or adhering to industry best practice are actions that are generally understood as defenses to "strict liability" claims, as that term is commonly used. Instead, Petitioners' cited sources all support #270's definition, which focuses on liability without regard to the reasonableness of the actor's conduct or the existence of a culpable mental state. *See* § 18-1-502, C.R.S. ("If [a voluntary act or omission] is

all that is required for commission of a particular offense, or if an offense or some material element thereof does not require a culpable mental state on the part of the actor, the offense is one of "strict liability.'"); *Union Supply Co. v. Pust*, 196 Colo. 162, 171 n.5 (1978) (endorsing the strict products liability theory of § 402A of the Restatement (Second) of Torts (1965), which imposes liability "even though . . . [the seller] has exercised all possible care"); *Boles v. Sun Ergoline, Inc.*, 223 P.3d 724, 727 (Colo. 2010) ("In strict products liability, the focus is on the nature of the product rather than the conduct of either the manufacturer or the person injured."); *Bradford v. Bendix-Westinghouse Auto. Air Brake Co.*, 33 Colo. App. 99, 110 (1973) ("Under strict liability, the focus is not on the conduct of the defendant, but rather, on the product itself and the consumer's expectations with regard to that product. Section 402A applies even where 'the seller has exercised all possible care in the preparation and sale of his product . . . .'"). There is thus no risk of misleading voters, and the title set was well within the Board's discretion.

CONCLUSION

The Court should affirm the title set by the Title Board on #270.

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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