

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 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 948 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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TABLE OF CONTENTS

REPLY ARGUMENT	1
I. Petitioner improperly relies on the merits and potential effects of #290 in arguing #290 contains multiple subjects.....	1
II. Petitioner proscribes her own interpretation of the title that is contrary to its plain language.....	4
CONCLUSION.....	6

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>In Re Proposed Initiative 1996-6 v. Hufford,</i> 917 P.2d 1277 (Colo. 1996)	2
<i>In re Title, Ballot Title & Submission Clause for 2009-2010 #45,</i> 234 P.3d 642 (Colo. 2010)	5
<i>In re Title, Ballot Title & Submission Clause for 2013-2014 #90,</i> 2014 CO 63.....	3
<i>In re Title, Ballot Title, Submission Clause for 2009-2010 No. 91,</i> 235 P.3d 1071 (Colo. 2010)	2
<i>Matter of Title, Ballot Title and Submission Clause for 2019-2020 #3,</i> 442 P3d 867 (Colo. 2019)	3
<i>Parrish v. Lamm,</i> 758 P.2d 1356 (Colo. 1988).....	5

REPLY ARGUMENT

I. Petitioner improperly relies on the merits and potential effects of #290 in arguing #290 contains multiple subjects.

Initiative #290 contains a single subject: preserving the December 2023 Rule until such time it is determined that NO_x emissions have been, or will not be, reduced 50% by 2030. Petitioner argues in her opening brief that Initiative 2023-2024 #290 contains multiple subjects coiled up in its folds. Petr’s Opening Br., p 5. In doing so, she points solely to the merits and potential effects of #290. Goad posits that the voting public “will be affirmatively surprised to learn that the measure will force the state to either reduce other sources of NO_x, such as motor vehicle emissions, or violate the Clean Air Act those same voters might be surprised to learn that voting for the measure could also curtail their own emission-producing habits such as driving a car” *Id.* at 7. But these speculations go only to the potential effects and merits of #290 and are nowhere to be found in its plain language.

Goad’s speculation about #290’s possible impacts on other laws or policy decisions does not create multiple subjects. This Court’s single-

subject review does not encompass an analysis of the potential ramifications of a measure. *In Re Proposed Initiative 1996-6 v. Hufford*, 917 P.2d 1277, 1281 (Colo. 1996). In evaluating whether #290 contains a single subject, this Court employs a review of the proposed measure’s plain language, not a detailed catalogue of potential impacts. *See In re Title, Ballot Title, Submission Clause for 2009-2010 No. 91*, 235 P.3d 1071, 1076 (Colo. 2010) (“We apply general rules of statutory construction and accord the language of the initiative its plain meaning.”).

The plain language of #290 does not assert, or even suggest, that it will result in compliance with the Clean Air Act, nor guarantee NO_x emissions will be reduced by 50% by 2030. In fact, the measure explicitly contemplates that the 50% target put forth by the December 2023 Rule may not be met and seeks only to preserve the December 2023 Rule until that determination is made. Record, p 7. That the state may or may not need to implement other emission reduction measures in order to comply with the Clean Air Act is a policy choice that is

irrelevant to the single subject presented in #290. “[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.”).

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. Petitioner proscribes her own interpretation of the title that is contrary to its plain language.

Petitioner argues in her opening brief that the title is misleading and does not correctly and fairly express #290's true intent and meaning. Petr's Opening Br., p 8. She asserts that the title is "difficult to comprehend," and suggests that #290 "reduces NO_x emissions from oil and gas operations, when it does exactly the opposite the title fails to convey to voters the change in the status quo on the state's ability to comply with the Clean Air Act, and how the initiative decreases the state's ability to reduce NO_x emissions to bring the Denver metro area into attainment." *Id.* at 9. Petitioner concludes that as drafted, voters will not understand the effect of a "yes or no vote." *Id.* at 9–10.

Petitioner ascribes her own meaning and impacts to #290, but that does not change the plain language of the title, which clearly states its purpose: preserving the December 2023 Rule until such time it is determined that NO_x emissions have been, or will not be, reduced 50%

by 2030. The effect of a “yes or no vote” is to permit the December 2023 Rule to stay in place until it is determined whether the 50% emission reduction goal will be met, or to not permit the December 2023 Rule to stay in place. The title is not misleading for failing to convey the effect of a yes or no vote; it 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). To implement Goad’s argument would result in a long and convoluted title that is unrelated to the single subject of #290, which itself would be confusing to the public. “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 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 OPENING BRIEF** upon the following parties electronically via CCEF, at Denver, Colorado, this 15th day of May, 2024, addressed as follows:

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