

COLORADO TITLE SETTING BOARD

**IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR PROPOSED INITIATIVE 2023-2024 #290**

MOTION FOR REHEARING ON PROPOSED INITIATIVE 2023-2024 #290

On behalf of Jessica Goad, registered elector of the State of Colorado, the undersigned counsel hereby submits to the Title Board this Motion for Rehearing on Proposed Initiative 2023-2024 #284 (“Initiative #284”) and as grounds therefore state as follows:

I. THE TITLE SET BY TITLE BOARD AT APRIL 17, 2024 HEARING

On April 17, 2024, the Title Board set the following ballot title and submission clause for Initiative #290:

A change to the Colorado Revised Statutes concerning the rules governing nitrogen oxide emissions adopted by the state on December 15, 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.

II. GROUND FOR REHEARING**A. The Initiative Impermissibly Contains Several Separate and Distinct Subjects in Violation of the Single Subject Requirement.**

Pursuant to Colo. Const. art. V, §1(5.5),

no measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls.

See also 1-40-106.5, C.R.S. “[T]he Board may not set the titles of a proposed Initiative, or submit it to the voters, if the Initiative contains multiple subjects.” *Aisenberg v. Campbell (In re Title, Ballot Title & Submission Clause 1990-2000 #104)*, 987 P.2d 249, 253 (Colo. 2000).

The single subject requirement serves two functions. First, the single subject requirement “is intended to ensure that each proposal depends upon its own merits for passage.” *Johnson v.*

Curry (In re Title, Ballot Title & Submission Clause for 2015-2016 #132), 374 P.3d 460, 465 (Colo. 2016). Second – and as pertinent here – the single subject requirement is intended to “prevent surprise and fraud from being practiced upon voters caused by the inadvertent passage of a surreptitious provision ‘coiled up in the folds’ of a complex initiative.” *Id.* “If an initiative advances separate and distinct purposes, the fact that they both relate to the same general concept or subject is insufficient to satisfy the single subject requirement.” *Id.*

Initiative #290 contains more than one separate subject in violation of article V, section 1(5.5) of the Colorado Constitution, and section 1-40-106.5, C.R.S.

The measure requires that the rules governing nitrogen oxide adopted on December 15, 2023, must stand until and unless the Air Pollution Control Division makes a formal written finding that oil and gas operators in the ozone nonattainment area have not met or will not meet the 2030 NOx reduction target in the state implementation plan. But the reality is that the NOx rule is not going to be enough to get the state of Colorado out of nonattainment with federal ozone standards, and the state will need to require more of the oil and gas sector to meet federal Clean Air Act requirements. So by locking in the NOx rule, the measure will require the state to reduce other sources of NOx, or require the state to violate the Clean Air Act. These are separate subjects coiled up in the folds of the measure, about which voters will be surprised to learn should this measure pass.

These separate subjects are couched in a measure that suggests that industry is on track to reduce NOx emissions by 50% by 2030, AND that may be sufficient to comply with various emissions laws. But this is the 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 NOx or violate the Clean Air Act. *See, e.g., Johnson, supra; In re Title & Ballot Title & Submission Clause for Initiative 2001-2002 #43*, 46 P.3d 438, 446 (Colo. 2002).

The purpose of the single subject requirement is to “obviate the risk of ‘uninformed voting caused by items concealed within a lengthy or complex proposal’” *Id.* While the Initiative is not long, a measure can be “complex” without necessarily being “lengthy” – indeed a short and seemingly simple initiative, directed to a large and moderately complex body of law, can harbor the most pernicious surprises “coiled up in [its] folds.” Here, Initiative #290 brings all these dangers.

B. The Ballot Title and Submission Clause Is Misleading, and Does Not Correctly and Fairly Express Its True Intent and Meaning.

The title of the Initiative is misleading and does not correctly and fairly express the initiative’s true intent and meaning. Section 1-40-106(3)(b), C.R.S. provides:

In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a "yes" or "no" vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly express the true intent and meaning thereof, together with the ballot title and submission clause. . . .

Titles and submission clauses should "enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal." *In re Title, Ballot Title & Submission Clause for Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 242 (Colo. 1990). The purpose of reviewing an initiative title for clarity parallels that of the single-subject requirement: voter protection through reasonably ascertainable expression of the initiative's purpose. *See id.*

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. Here, the title for Initiative #290 is one for which the general understanding of the effect of a "yes" or "no" vote will be unclear. See generally 1-40-106(3)(b). As a result, the title for Initiative #290 does not enable voters to make an informed choice because it does not correctly and fairly express its true intent and meaning.

III. CONCLUSION

Based on the foregoing, Jessica Goad requests a rehearing of the Title Board for Initiative 2023-2024 #290, because the initiative contains multiple subjects, the title is unclear and misleading to voters, and it fails to fairly express the initiative's true meaning and intent. As a result, the Title Board lacks jurisdiction to set a title and should reject the measure in its entirety.

Respectfully submitted this 24th day of April, 2024.

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ATTORNEYS FOR OBJECTOR JESSICA GOAD

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 24th day of April 2024, a true and correct copy of **MOTION FOR REHEARING ON PROPOSED INITIATIVE 2023-2024 #290** was filed and served on Proponents Michele Haedrich and Steven Ward, via email to their counsel of record as follows:

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