

COLORADO TITLE SETTING BOARD

**IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR PROPOSED INITIATIVE 2023-2024 #46**

MOTION FOR REHEARING ON PROPOSED INITIATIVE 2023-2024 #46

On behalf of Patricia Nelson and Paul Culnan, registered electors of the State of Colorado and designated representatives for Proposed Initiative 2023-2024 #46, the undersigned counsel hereby submits to the Title Board this Motion for Rehearing on Proposed Initiative 2023-2024 #46 (“Initiative #46”) and as grounds therefore state as follows:

I. THE TITLE SET BY TITLE BOARD AT MAY 17, 2023 HEARING

On May 17, 2023, the Title Board set the following ballot title and submission clause for Initiative #46:

Shall there be a change to the Colorado Revised Statutes concerning discontinuing the issuance of new oil and gas operation permits that utilize fracking by December 31, 2030, and, in connection therewith, requiring the phase-out of new oil and gas operation permits that utilize fracking; allowing permitted oil and gas operations that utilize fracking to continue; and requiring the state to explore transition strategies for impacted oil and gas workers who may transition to other employment?

II. GROUNDINGS FOR REHEARING**A. The Ballot Title and Submission Clause Is Misleading Because It 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 because it omits language informing voters that the intent of the measure is to protect land, air, and water. 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 primary purpose of Initiative #46 as expressed in the Declaration of Purpose and in the body of the measure itself in the proposed language at C.R.S. 34-60-106(20.5) is to protect Colorado's land, air, and water. The measure achieves this purpose by phasing out new oil and gas operation permits that utilize fracking between January 1, 2026, and December 31, 2030, at which time no new permits that utilize fracking may be issued.

Notably, Objector Ward made the argument that 25% of respondents to a poll did not believe there was a problem with fracking as it pertains to protecting land, air, and water.¹ Indeed, this is precisely why the title needs to inform voters of the true meaning and intent of the measure. Study and after study demonstrate that fracking is detrimental to land, air, and water.² A title should contribute to voter understanding and purpose of the initiative. *In re Title, Ballot Title & Submission Clause*, etc., 646 P.2d 916, 922 (Colo. 1982) ("the language adopted by the Board reflects the content of the initiative").

Here, based on an objector's own arguments, the title for Initiative #46 is one for which the general understanding of the effect of a "yes" or "no" vote will be unclear without inclusion of the "to protect land, air, and water" language. *See generally* C.R.S. §1-40-106(3)(b); *see also In re Proposed Initiative on "Obscenity,"* 877 P.2d 848, 850-51 (Colo. 1994). As a result, the title for Initiative #46 does not enable voters to make an informed choice because it does not correctly and fairly express its true intent and meaning.

B. Language That Is Not a Catch Phrase But That Describes the Intent of the Measure Is Appropriately Included in the Title.

Each member of the Title Board appropriately rejected the argument that "to protect land, air and water" was a catch phrase at the May 17, 2023, hearing.³ Instead, they seem to have decided not to include the language in the title for Initiative #47 due to proposed hypothetical arguments raised in the Foster Motion for Rehearing on proposed initiatives 2023-2024 #44 and #45 that suggested that the Title Board would be bound to include language of the intent of a measure in titles in the future.⁴ The Title Board, however, already has a history of including language regarding intent in setting titles when it contributes to voter understanding and the purpose of the measure. *See, for e.g.*, Initiative 2021-2022 #58, for which the Title Board set the following title (emphasis supplied):

¹ *See* Title Board hearing audio recording from May 17, 2023 at https://csos.granicus.com/player/clip/385?view_id=1&redirect=true&h=3e91faadd4a13e770940c80a86cc7a94, Taheri 2:55:49-2:56:10. Note that portions of the audio cited herein refer to the rehearing for Proposed Initiatives 2023-2024 #44 and #45, which are very similar to Proposed Initiatives 2023-2024 #46 and #47, and the Designated Representatives-Petitioners sought the same "to protect land, air, and water" language in the titles for #44 and #45.

² *See for e.g.*, Proponents' Exhibits 1, 2a, 2b, and 3 introduced during the rehearing for Proposed Initiatives 2023-2024 #44 and #45.

³ *Id.*, Conley 2:30:25-37; Barry 2:31:30-49; Morrison 2:32:59-33:18; Conley 2:37:30-41; Conley 2:38:37-57.

⁴ *Id.*, Conley 2:30:42-51; Morrison 2:32:27-51.

Shall there be a change to the Colorado Revised Statutes concerning legal regulated access to natural medicine for persons 21 years of age or older, and, in connection therewith, defining natural medicine as certain plants or fungi that affect a person's mental health and are controlled substances under state law; establishing a natural medicine regulated access program for supervised care, and requiring the department of regulatory agencies to implement the program and comprehensively regulate natural medicine *to protect public health and safety*; creating an advisory board to advise the department as to the implementation of the program; granting a local government limited authority to regulate the time, place, and manner of providing natural medicine services; allowing limited personal possession, use, and uncompensated sharing of natural medicine; providing specified protections under state law, including criminal and civil immunity, for authorized providers and users of natural medicine; and, in limited circumstances, allowing the retroactive removal and reduction of criminal penalties related to the possession, use, and sale of natural medicine?

See also Initiative 2021-2022 #108, for which the Title Board set the following title (emphasis supplied):

Shall there be a change to the Colorado Revised Statutes concerning statewide funding for additional affordable housing, and, in connection therewith, dedicating state revenues collected from an existing tax of one-tenth of one percent on federal taxable income of every individual, estate, trust, and corporation, as defined in law, for affordable housing and exempting the dedicated revenues from the constitutional limitation on state fiscal year spending; allocating 60% of the dedicated revenues to affordable housing financing programs *that will reduce rents, purchase land for affordable housing development, and build assets for renters*; allocating 40% of the dedicated revenues to programs that *support affordable home ownership, serve persons experiencing homelessness, and support local planning capacity*; requiring local governments that seek additional affordable housing funding to expedite development approvals for affordable housing projects and commit to increasing the number of affordable housing units by 3% annually; and specifying that the dedicated revenues shall not supplant existing appropriations for affordable housing programs?

The titles for Initiatives for 2021-2022 #58 and #108 demonstrate that the Title Board's inclusion of "to protect land, air, and water" in the title for Initiative #46 would not set new precedent that binds the Title Board to always include language of intent in its titles. Rather, the titles for Initiatives 2021-22 #58 and #108 confirm that it is appropriate to include language of meaning and intent when such language adds to voter understanding. *See In re Title, Ballot Title & Submission Clause, & Summary for 1997-98 # 112 (Livestock Operations)*, 962 P.2d 255, 256 (Colo. 1998) (Supreme Court approves use of "to protect the environment and human health" in summary). Similarly, the words "to protect land, air, and water" are descriptive terms that will present the meaning and intent

of Initiative #46 to voters in a straightforward manner. *See In re Ballot Title for 2009-2010 No. 45.*, 234 P.3d 642 (Colo. 2010).

III. DATE OF REHEARING

Per discussion at the initial Title Board hearing on Initiative #46, the Designated Representatives respectfully request that the rehearing at which all Motions for Rehearing filed on Initiative #46 take place on June 21, 2023, rather than on June 7, 2023 because one of the Designated Representatives and their counsel have a conflict on the next regular Title Board meeting on June 7, 2023.

IV. CONCLUSION

Based on the foregoing, Patricia Nelson and Paul Culnan request a rehearing of the Title Board for Initiative 2023-2024 #46 on June 21, 2023, because the title fails to fairly express the initiative's true meaning and intent.

Respectfully submitted this 24th day of May 2023.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 24th day of May, 2023, a true and correct copy of **MOTION FOR REHEARING ON PROPOSED INITIATIVE 2023-2024 #46** was filed and served via email or U.S. mail, postage prepaid, to the following:

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