

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION
CLAUSE FOR INITIATIVE 2023-2024 #280

MOTION FOR REHEARING

On behalf of Sara Lynn Blackhurst, registered elector of the State of Colorado, the undersigned counsel hereby submits this Motion for Rehearing for Initiative 2023-2024 #280 (“Proposed Initiative 280”) pursuant to C.R.S. § 1-40-107, and as grounds therefore states as follows:

I. INTRODUCTION**a. Proposed Initiative #280 would upend oil and gas exploration in Colorado.**

Oil and gas exploration sits at the heart of Colorado’s economy. Each year, the oil and gas industry brings in \$48,000,000,000 to Colorado.¹ That translates to billions of dollars in tax revenue for our state, and countless jobs for our residents.²

Recognizing the need to balance economic development, energy independence, and the safety of its residents, Colorado has devised a complex web of regulations to guide oil and gas exploration in our state. That balance is kept by countless constitutional provisions, statutes, regulations, caselaw, and private contracts, which represent a century of multilateral negotiations between residents, exploration companies, advocacy organizations, and governmental officials.

Because the regulation scheme is so vast, and its intricacies so complex, modifications to even a limited number of provisions can cause drastic effects that extend well beyond the oil and gas industry. If a reformer is not careful, a seemingly minor change might inadvertently paralyze an unrelated industry.

¹ *Colorado’s Abundant Natural Gas and Oil Resources Provide Over \$48 Billion in Economic, Trade, & Job Benefits*, THE AMERICAN PETROLEUM INSTITUTE, <https://www.api.org/news-policy-and-issues/news/2023/05/16/api-pwc-co-2023> (last visited April 23, 2024).

² Anna Staver, *Oil and gas generates \$1 billion in state and local taxes for Colorado, report finds*, THE DENVER POST (March 22, 2019) <https://www.denverpost.com/2019/03/22/oil-gas-taxes-colorado/>.

That is the danger posed by Proposed Initiative #280. At first glance, Proposed Initiative #280 purports to modify the permitting process for oil and gas exploration. But Proposed Initiative #280 would require a permit for virtually every alteration to any hydrocarbon facility in the state, revolutionize the way emissions are measured, and arbitrarily limit exploration based on geographic boundaries.

One of the measure’s proponents even admitted that Proposed Initiative #280 spans at least five separate subjects. At the initial hearing, a proponent of Proposed Initiative #280 described its single subject as:

- Requiring the Air Quality Control Commission (AQCC) to begin aggregating emissions. (Proposed Initiative #280, Section 1, § 25-7-114.2(3)).
- Conditioning construction permits on compliance with the national ambient air quality standards. (Proposed Initiative #280, Section 2, § 25-7-114.9(2)(a)(I)).
- Requiring air quality modeling. (Proposed Initiative #280, Section 2, § 25-7-114.9(2)(b)).
- Requiring certain state agencies to enforce any assumptions regarding quality modeling. (Proposed Initiative #280, Section 2, § 25-7-114.9(2)(c)(I)).
- Requiring applicants to obtain a permit from the AQCC before they can obtain a permit from the Energy and Carbon Management Commission (ECMC). (Proposed Initiative #280, Section 3, § 34-60-106(1)(k)).³

Because this measure impermissibly spans multiple subjects, the Title Board lacks jurisdiction to set title.

b. Relevant statutes and regulations.

A review of the text of Proposed Initiative #280 only confirms its breadth. Proposed Initiative #280 would transform three different statutory regimes.

Section 25-7-114.2 currently requires operators to seek a construction permit before “substantially altering” any stationary source. C.R.S. § 25-7-114.2. Proposed Initiative #280 would lower the threshold at which an operator must seek a permit,

³ *Title Board Rehearing Audio* (9:18:00), https://csos.granicus.com/player/clip/450?view_id=1&redirect=true.

require an operator to forgo construction until the permit is approved, and transform the manner in which the AQCC or Department of Public Health and Environment (DPHE) (together, the “State”) measure emissions. (Proposed Initiative #280, Section 1.)

Proposed Initiative #280 would create Section 25-7-114.9, which would impose new limits on the State’s ability to grant construction permits, forbidding new construction permits unless 1) the new source is not or would not be in a non-attainment area, 2) the owner of the source reduces their other emissions to offset the emissions from the new source, and 3) the new source is not in a “disproportionately impacted community.” Section 114.9 would further require the State to base its permitting decisions on a model, rather than monitored data, and set stringent requirements on what that model may contain. Finally, Section 114.9 would make the emissions offset a continuing obligation of the applicant, rather than a precondition to receiving the permit. (Proposed Initiative #280, Section 2).

Proposed Initiative #280 would further require applicants to secure construction permits before obtaining any other permit from the AQCC. (Proposed Initiative #280, Section 3).

II. INITIATIVE #280 IMPERMISSIBLY CONTAINS MULTIPLE SEPARATE AND DISTINCT SUBJECTS IN VIOLATION OF THE SINGLE-SUBJECT REQUIREMENT.

The measure’s true nature, as described above, highlights that there are several separate subjects improperly coiled in the folds that would lead to significant voter surprise and result in impermissible logrolling. The single-subject requirement is designed to prevent just that. *In re Proposed Initiative 2001-02 No. 43*, 46 P.3d 438, 442 (Colo. 2002) (the single subject rule helps avoid “voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision ‘coiled up in the folds’ of a complex initiative”); *In re Title, Ballot Title & Submission Clause, for 2007–2008, #17*, 172 P.3d 871, 875 (Colo. 2007) (“We must examine sufficiently an initiative’s central theme to determine whether it contains hidden purposes under a broad theme.”).

Initiative #280 contains multiple separate subjects, including at least:

1. Changing the threshold from “substantially alter” to “modify,” so a person must seek a construction permit if they would like change, no matter how slightly, the emissions from “any building, facility, structure, or installation, except single-family residential structures.” (Proposed Initiative #280, Section 1, § 25-7-114.2(2)(a)).
2. Providing that a request for a permit does not allow the applicant to begin construction. (Proposed Initiative #280, Section 1, § 25-7-114.2(2)(c)).

3. Transforming the manner in which the State measures emissions, directing it to aggregate emissions and include emissions from pre-production activities. (Proposed Initiative #280, Section 1, § 25-7-114.2(3)(a–b)).
4. Imposing new restrictions on projects in “nonattainment zones,” forbidding construction unless 1) the new source will not contribute to an exceedance of a national air quality standard, 2) the owner of the source reduces their other emissions to offset the emissions from the new source, and 3) the new source is not in a “disproportionately impacted community.” (Proposed Initiative #280, Section 2, § 25-7-114.9(2)(a)).
5. Requiring the State to rely on air quality modeling instead of monitoring, and setting the requirements of that modeling. (Proposed Initiative #280, Section 2, § 25-7-114.9(2)(b)).
6. Transforming the AQCC’s role from one that approves permits to one that monitors and enforces compliance with offsets. (Proposed Initiative #280, Section 2, § 25-7-114.9(2)(c)).
7. Forbidding the ECMC from issuing permits unless and until the AQCC issues a construction permit. (Proposed Initiative #280, Section 3, § 30-60-106(1)(k)).

These separate subjects, many of which voters would be surprised to learn are included among the measure’s features, deprive the Title Board of jurisdiction to set a title. Take for instance the lowered threshold at which people have to seek a construction permit. Under the current regime, people need to seek a construction permit only if their project would “substantially alter” any building. C.R.S. § 25-7-114.2. Under Proposed Initiative #280, people would need to seek a permit for any activity that 1) increased the amount of air pollutant emitted *by any amount*, or 2) results in the emission of any air pollutant not previously emitted. (Proposed Initiative #280, Section 1). Under the measure, oil and gas operators would have to secure a construction permit if they wanted to use a new spray-on lubricant, as that lubricant might introduce a small amount of air pollutant not presently being emitted. Such a restriction would essentially freeze exploration in its tracks.

The Colorado Supreme Court recently rejected an initiative based on the same sort of potential for voter surprise. In *In re Title, Ballot Title & Submission Clause for 2021-2022 #16*, the Court reviewed a measure that addressed cruelty to livestock and cruelty to non-livestock animals. 489 P.3d 1217 (Colo. 2021). The Court ultimately rejected the measure, as a voter would be surprised to learn that a measure concerning livestock would also affect the animal cruelty laws that apply to non-livestock animals. *See id.* at 1225. The Court held that the treatment of

livestock is a distinct subject from the treatment of non-livestock. *Id.* If the treatment of livestock is a distinct subject from the treatment of non-livestock animals, then new oil and gas exploration is a distinct subject from the maintenance of machines that sit on oil and gas exploration facilities. Because that distinct subject is hidden in the measure, and because the measure hides that it might halt oil and gas exploration altogether, Proposed Initiative #280 promotes the “coiled in the folds” concerns that the single-subject requirement is designed to prevent.

The measure also engages in logrolling by attempting to garner votes from those who support alleviating the administrative burden on the AQCC, (*see* Proposed Initiative #280, Section 2 (allowing the AQCC to rely on modeling rather than labor-intensive monitoring)), with those who want the AQCC to take a heavier role in permitting, (*see* Proposed Initiative #280, Section 2, (requiring the AQCC to enforce setoffs as a permit condition)). Because the measure is designed to solicit support from these competing factions, it promotes the concern of logrolling, which is a hallmark of measures that span more than one subject.

Given the multiple subjects present on the face of the measure, the surprising effects that are coiled in the folds of the measure, and the risk of logrolling, Title Board should find that Proposed Initiative #280 spans multiple subjects and decline to set title.

CONCLUSION

Accordingly, the Objector respectfully requests that this Motion for Rehearing be granted and a rehearing set pursuant to C.R.S. § 1-40-107(1).

Respectfully submitted this 24th day of April, 2024.

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