

COLORADO TITLE SETTING BOARD

**IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR PROPOSED INITIATIVE 2019-2020 #297**

MOTION FOR REHEARING ON PROPOSED INITIATIVE 2019-2020 #297

On behalf of Janette Susan Rose, registered elector of the State of Colorado, the undersigned counsel hereby submits to the Title Board this Motion for Rehearing on Proposed Initiative 2019-2020 #297 (“Initiative #297”) and as grounds therefore state as follows:

I. THE TITLE SET BY TITLE BOARD AT APRIL 1, 2020 HEARING

On April 1, 2020, the Title Board set the following ballot title and submission clause for Initiative #297:

Shall there be an amendment to the Colorado constitution prohibiting the state and local governments from restricting the installation and use of natural gas in homes and businesses except as required for safety purposes?

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 #297 contains numerous separate subjects in violation of article V, section 1(5.5) of the Colorado Constitution, and section 1-40-106.5, C.R.S. While the initiative is purportedly limited to “restricting the installation and use of natural gas,” in effect it also does the following:

The measure does not define what “restrictions” means, and that term covers a whole range of different subjects in the Initiative, such as, just by way of example at least the following six subjects: (1) requirements for the inspection of natural gas appliances, (2) constraints on downstream consumer use of patented or trademarked products using natural gas; (3) compliance with antitrust laws applicable to products using natural gas; (4) collection of state or local taxes on certain materials or products; (5) obligations to meet energy efficiency requirements in building codes; and (6) compliance with state greenhouse gas emission targets.

Additionally, while the initiative purports to ban laws that “inhibit consumer choice through restrictions on the installation of natural gas utilization in homes and businesses...” it will primarily drive the choices of others, such as builders, and apartment building owners, and state and local governments, to name just a few, who may be incentivized to use natural gas instead of more energy efficient energy sources. That will inhibit consumer choice for most consumers who buy or lease a home or business with the heating system and appliances already installed.

Each of these purposes is couched in a measure that at first read would appear to be expanding consumer choice about natural gas use – when in fact very much the opposite is true. This is the classic “coiled up in the folds” scenario whereby the voting public will be affirmatively misled by the language of the measure. *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 #297 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 initiatives' 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 #297 does not apprise voters that (1) the measure lists cooking, hot water system, generators and heating systems as among the types of natural gas use to be restricted; (2) the measure also adds a catch-all provision to capture any other statute, regulation or local government that otherwise limits a consumer's ability to use or install natural gas; (3) the measure prohibits state statutes, regulations and local governments from restrictions on natural gas use but specifies that it only modifies, limits and supersedes conflicting state statute or regulation and not local government laws; and (4) the title makes no mention of the measure's applicability to home rule jurisdictions.

Here, the title for Initiative #297 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); *see also In re Proposed Initiative on "Obscenity,"* 877 P.2d at 850-51. As a result, the title for Initiative #297 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, Janette Susan Rose requests a rehearing of the Title Board for Initiative 2019-2020 #297, 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 7th day of April 2020.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 7th day of April, 2020, a true and correct copy of **MOTION FOR REHEARING ON PROPOSED INITIATIVE 2019-2020 #297** was filed and served via email or U.S. mail, postage prepaid, to the following:

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