

COLORADO TITLE SETTING BOARD

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IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE  
FOR INITIATIVE 2021-2022 #136

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**MOTION FOR REHEARING**

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On behalf of David Davia and Commissioner Cody Davis, designated representatives for Initiative 2021-2022 #136 (“Initiative”), the undersigned counsel hereby submits this Motion for Rehearing of the Title Board’s April 21, 2022, decision to deny setting of a title for the Initiative on the grounds that the initiative does not contain a single subject.

The designated representatives assert that the Initiative does not contain multiple separate and distinct subjects in violation of the single-subject requirement. The Initiative establishes an independent regulatory board to replace the Colorado oil and gas conservation commission. The appointment process and scope of authority of the proposed independent oil and gas commission is designed to separate decisions about oil and gas development from partisan political bias and interest group pressure. The initiative provides regulatory authority to the independent board and defines the scope of authority other agencies have over oil and gas operations. The provisions of the Initiative are properly related, and the Title Board must find single subject in accordance with the law.

Provisions that describe “part of the legal framework” necessary to achieve the purposes of the Initiative are “properly connected to the subject.” *In re 2013-2014 #89*, 328 P.3d at 177. Provisions that address the scope of governmental authority are “sufficiently narrow and sufficiently connected’ ... to satisfy the single subject rule.” *In re Title, Ballot Title, Submission Clause for 2011-2012 No. 45*, 274 P.3d 576, 581 (Colo. 2012), citing *In re Proposed Initiative 2001–02 No. 43*, 46 P.3d 438 (Colo. 2002).

“[T]he mere fact that a constitutional amendment may affect the powers exercised by government under pre-existing constitutional provisions does not, taken alone, demonstrate that a proposal embraces more than one subject. All proposed constitutional amendments or laws would have the effect of changing the status quo in some respect if adopted by the voters.” *In re 1999-2000 No. 258(A)*, 4 P.3d at 1098. Authorizing the independent commission to make regulatory decisions that affect the power of another executive agency follows directly and logically from the central focus of the Initiative and does not constitute a separate subject. *Id.*

The single subject requirement must be construed liberally so as not to impose undue restrictions on the initiative process and to preserve and protect right of initiative and referendum. *Bruce v. City of Colorado Springs*, 252 P.3d 30 (Colo. App. 2010); and *Matter of Title, Ballot Title and Submission Clause, and Summary with Regard to a Proposed Petition for an Amendment to Constitution of State of Colo. Adding Subsection (10) to Sec. 20 of Art. X (Amend Tabor 25)*, 900 P.2d 121 (Colo. 1995).

In 2020 the title board set title for a proposed initiative 2019-2020 #311 (“Initiative #311”), which created an independent oil and gas commission with an independent appointment process. The proposed independent commission would take over the duties and responsibilities of the current oil and gas conservation commission, and, in addition, the new commission would have comprehensive authority over oil and gas regulation, specifically including the authority to approve regulations issued by other agencies that would affect oil and gas operations in Colorado. The Title Board had significant discussions at the time regarding the authority of the new Commission and specifically regarding the new commission's authority to regulate in areas that affected oil and gas regulations but were under the purview of other executive agencies in existing law.

This initiative is substantively the same as Proposed Initiative 2019-2020 #311, which had title set and was reviewed by petition to the Colorado Supreme Court, with the Court affirming the jurisdiction and title set by the title board. Colorado Supreme Court Case 2020SA160 (June 11, 2020). The opening brief submitted by the Title Board’s own attorneys argued that “[t]he measure’s provision changing the rulemaking authority of existing state agencies is merely an effect that #311 has on existing law, not an impermissible second subject.” Title Board Opening Brief for Supreme Court Case 2020SA160, Page 4, ¶ 1.

In addition, the concepts contained in the Initiative are the same as the concepts contained in Colorado Senate Bill 19-181 (“SB 181”), which was signed into law on April 16, 2019, and which was also required to have a single subject under Colo. Const art. V, §21. Assuming SB 181 properly contained a single subject, the Initiative also properly contains one. SB 181 revamped the Colorado oil and gas conservation commission, redefined its scope of authority, and specifically addressed how its authority relates to that of other state agencies.

Concerns raised at the initial Title Board hearing for the Initiative regarding the functions of the new independent commission and about the nature of changes to the commission’s authority are issues of merit. A single initiative may make changes on a large scale and still be fully within a single subject.

The case cited at the initial hearing regarding the issue of shifting of authority between executive departments is clearly distinguishable from the provisions of the Initiative. *See Howes v. Brown*, 235 P.3d 1071 (Colo. 2010). In that case, the proposed initiative would have placed a four-year prohibition on the authority of the General Assembly to legislate in a specific area of law. The Initiative, however, simply shifts regulatory authority from one executive department to another. These provisions of the Initiative are far from an infringement on the General Assembly’s authority. While the “legislative power of the state shall be vested in the general assembly ... the people reserve to themselves the power to propose laws and amendments to the constitution and to enact or reject the same at the polls independent of the general assembly and also reserve power at their own option to approve or reject at the polls any act or item, section, or part of any act of the general assembly.” Colo. Const. Art. V, Section 1(1).

Also in that case, the restriction of legislative authority did not relate directly to the proposed initiative’s single subject. Specifically, related to that initiative the court found “no

necessary and proper connection between the establishment and administration of a beverage container tax and a prolonged prohibition on the exercise of the General Assembly's authority over the basin roundtables and the interbasin compact committee.” *Id.* At 1080. The Initiative is defining of the scope of authority of the independent oil and gas commission which it establishes, and this is directly related to the single subject.

The designated representatives are required to craft an initiative that does not contain more than one subject. In response to concern at the hearing that the statement of single subject offered by the proponents was not comprehensive enough, the designated representatives will modify their proposal of the the single subject of the Initiative to be the same as the single subject proposed for Initiative #311, which is also consistent with SB 181. The single subject of the Initiative is “concerning the regulation of oil and gas operations.”

Accordingly, the designated representatives respectfully request that this Motion for Rehearing be granted and a title set pursuant to C.R.S. § 1-40-107(1).

Respectfully submitted this 27<sup>th</sup> day of April, 2022.

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