

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	<p>DATE FILED May 14, 2026 4:09 PM</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2025- 2026 #312 (“Cost of Natural Gas Pipeline Extensions”)</p> <p>Petitioner: Edward Andrew Leighty,</p> <p>v.</p> <p>Respondents: Sidra Aghababian and Jessica Arhontoulis,</p> <p>and</p> <p>Title Board: Christy Chase, Theresa Conley, and Kurt Morrison</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Petitioner:</p> <p>Thomas M. Rogers III, #28809 Nathan Bruggeman, #39621 Recht Kornfeld, P.C. 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-573-1900 (telephone) 303-446-9400 (facsimile) trey@rklawpc.com; nate@rklawpc.com;</p>	<p>Case Number: 2026SA148</p>
<p>PETITIONER’S ANSWER BRIEF</p>	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

It contains 1,975 words.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

/s Nathan Bruggeman _____

Nathan Bruggeman

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Colo. Senate Bill 23-2915

Constitutional Provisions

Colo. Const., art. XXV2, 3

Petitioner Edward Andrew Leighty by and through counsel, Recht Kornfeld, P.C., respectfully submits his Answer Brief, and states:

ARGUMENT

I. The Proposed Initiative violates the single subject requirement.

A. The Proposed Initiative’s alterations to government authority are not speculative effects.

The Title Board’s single subject argument is that Petitioner is making an “effects” argument, which the Court should not consider. (Title Bd.’s Br. at 6-7.)

The Board appears to take the position that it is an “effects” argument because the single subject violation is “not[in] the text of the measure itself.” (*Id.* at 10.)

Petitioner does not dispute the principle that neither the Title Board nor the Court predicts or speculates as to a measure’s effects as part of the single subject analysis. *See In re Title, Ballot Title, & Submission Clause for 2011-2012 #3, 2012 CO 25, ¶ 8.* But the Board misapplies the principle here.

The Board cannot be correct that, for there to be a single subject violation, each subject must be literally stated in the measure’s text. If that were the case, it would eviscerate one of the two primary purposes of the single subject limitation, which is to prevent voter surprise and fraud by something that is hidden or

surreptitious in a measure. *See* C.R.S. § 1-40-106.5(1)(e)(II). By definition, something that is hidden or surreptitious is not apparent.

A literally-in-the-text rule would allow—if not fully incentivize—initiative proponents to hide subjects through drafting. Indeed, that type of drafting issue was raised by one of the Board members with respect to *this Initiative*. Here, instead of amending Article XXV (“Public Utilities”), governing utility and utility rate regulation, *see* Colo. Const., art. XXV, Proponents placed their amendment in Article XVIII (“Miscellaneous”), (CF p. 12). As the Attorney General’s designee explained, this created a “coiled in the folds” problem because it was not apparent what was being changed. (*See* Apr. 23, 2026, Title Bd. Hr’g (“Apr. 23 Hr’g”) at 1:51:59 to 1:52:12.) Initiative proponents should not be permitted to circumvent the constitutional single subject limitation through clever drafting. Thus, this Court has recognized that it “must sufficiently examine an initiative to determine whether [it] violates the single subject rule” and “will, when necessary, characterize a proposal sufficiently to enable review of the Board's actions.” *In re Title & Ballot Title & Submission Clause for 2005-2006 #55*, 138 P.3d 273, 278 (Colo. 2006).

And Petitioner’s argument is not, as the Board and Proponents suggest, hypothetical. (*See* Title Bd.’s Br. at 10 (“potential effects”); Proponents’ Br. at 10-

11 (“may have different effects”).) The Constitution is clear that the state has full authority to regulate rates and charges, and municipalities that own utilities are responsible for their own regulation. *See* Colo. Const., art XXV. If the measure passes, then the state and municipalities lose that constitutional authority with respect to this area of rate setting.

Proponents attempt to elide this problem by framing the measure as only regulating utility billing practices. (Proponents’ Br. at 6-7.) But the argument misses the point: utilities can’t simply bill consumers however they like. At the state level, it is done through a thorough rate setting process, including public hearings before a constitutionally constituted expert body (the Public Utilities Commission (“PUC”)), with established standards to balance competing considerations, and judicial review. (*See* Pet.’s Opening Br. at 10-13 (citing and describing authority).) For municipal utilities, they have their own legally established processes and are subject to local voter control. *See* Colo. Const., art. XXV; *City of Fort Morgan v. Pub. Utils. Comm’n*, 159 P.3d 87, 93 (Colo. 2007). The measure isn’t simply regulating utility billing practices—it is changing what regulators can approve, as neither the state nor municipalities can approve a rate that the Constitution says is illegal. It deprives these levels of government of the

ability to address this area of rate regulation, as they would no longer have their previously conferred constitutional authority.

In sum, the Court has to consider what the Proposed Initiative does to determine its single subject, and, in the guise of regulating utility behavior, the Proposed Initiative unquestionably alters the authorities of two different levels of government as currently granted by the Constitution.

B. The Court has not passed on whether a utility measure such as this violates the single subject requirement.

As proof of their single subject, Proponents refer to two bills and an initiative that they say show that it is common to regulate both investor-owned utilities (i.e., PUC regulated) and municipal utilities. (Proponents' Br. at 7-8). As an initial matter, they cite no decision of this Court addressing any of these examples' single subject compliance.

On the merits, the examples do not support Proponents' argument. Although Amendment 37 purported to apply to all utilities with at least 40,000 customers (i.e., including large municipally owned utilities),¹ the General Assembly amended

¹ The text of the initiative is available in the Legislative Council of the Colorado General Assembly's "Analysis of the 2004 Ballot Proposals," Research Publication

the statute the next year to address the regulatory separation of municipally owned utilities. *See* C.R.S. § 40-2-124(1) & (3) (2005); Colo. Senate Bill 05-143 (“Introduced”), “Bill Summary” (“Clarifies the jurisdictional reach of the measure with regard to municipally owned utilities, which are exempt from most regulation under the Colorado constitution ...”), *available at* <https://tinyurl.com/2k66xyxj>. Senate Bill 21-72 did not mandate that municipally owned utilities join an organized wholesale market—it exempted them. *See* C.R.S. § 40-5-108(2)(a)(I) (“Except as otherwise provided in subsection (2)(a)(II) of this section, ***and except for municipally owned utilities and power authorities***, all Colorado transmission utilities shall join an organized wholesale market on or before January 1, 2030.” (emphasis added)); Colo. Senate Bill 21-072 at 5. And, as Proponents note, (Proponents’ Br. at 8), the charge limitations on utilities in Senate Bill 23-291, which are codified in C.R.S. § 40-3-114, apply to PUC-regulated utilities, not municipally owned utilities. *See* C.R.S. § 40-3-102 (applying constitutional exemption for municipal utilities to article 3 of title 40). None of these examples

No. 527-1, September 8, 2004, at pages 39 to 44 (*available at* <https://tinyurl.com/mub8ns45>).

alter the constitutional regulatory authority of the state and municipalities that own utilities as the Initiative seeks to do.

Proponents, like the Title Board, also take issue with cases Petitioner has cited, in particular noting the Court's discussion in *In re Title, Ballot Title and Submission Clause for 2009-2010 #91* that reallocations of government authority violate the single subject requirement when they are not necessarily and properly connected to the measure's single subject. *See* 235 P.3d 1071, 1077 (Colo. 2010). (Proponents' Br. at 9; Title Bd.'s Br. at 8.) But this misses two fundamental single subject problems with Proponents' measure: *First*, it changes both state *and* municipal regulatory authority. These are separate levels of government, and the regulatory authority of one is separate and distinct from the regulatory authority of the other. *Second*, based upon the drafting of the measure and the titles set by the Board, *no* voter will understand that they are being asked to change governmental authority. *See* 2009-2010 #91, 235 P.3d at 1079 (explaining that voters "might be surprised to learn" they would be limiting General Assembly's legislative authority); *see also, e.g., In re Title, Ballot Title, & Submission Clause for 2015-2016 #132 and #133*, 2016 CO 55, ¶¶ 25-26 (finding a single subject violation in measures that would "change the role and mission of the [Supreme Court

]Nominating Commission,” as the measures ran “the risk of surprising voters with a ‘surreptitious change’ not anticipated by” the measures’ “seemingly neutral requirement”).

The Proposed Initiative may be short, but as the Board Chair noted, it is working “a bigger structural change” than its brevity suggests. (Apr. 23 Hr’g at 1:50:02 to 1:50:06.) The measure alters the authority of two levels of government under the cover of addressing a billing practice, working the type of surprise on voters the single subject requirement is meant to prevent—and, as such, the Court should order its return to Proponents.

II. The measure’s applicability clause is central to the Initiative’s operation.

A. Neither the Board nor Proponents explain how the applicability clause operates.

Both the Title Board and Proponents emphasize that the applicability clause is meant to make clear that the measure applies prospectively, not retroactively. (Proponents’ Br. at 12-13; Title Bd.’s Br. at 13.) Petitioner did not dispute that below (and does not dispute that now). Petitioner’s argument is, instead, that the clause’s future application is unintelligible such that the Title Board could not understand it so that titles could be set. The applicability clause does not state that

it applies to pipelines constructed after the measure's passage, as Proponents suggest. (Proponents' Br. at 13.) Instead, it refers to "contracts" and "conduct," but those terms are not defined and, in the case of rate regulation, they are facially unclear as to what triggers the measure's application. And that vagueness suggests to voters that they will receive a financial benefit from the measure's passage (when, in fact, they may not or, at least, not anytime soon). That's a powerful inducement to support the measure.

B. The applicability of the measure is not an "implementation" detail.

Proponents argue that the applicability of the measure is a mere implementation detail. (Proponent's Br. at 3-4, 14.) That argument is not persuasive. In a two-sentence measure, the applicability clause is one of two sentences—and, more fundamentally, will lead to the measure applying differently to different Coloradans, as Proponents appear to acknowledge. (*See* Proponents' Br. at 13.) There is nothing in the titles to alert voters to this fact. While it could be the case that staggered implementation of a measure might not be a matter of voter interest in some situations, here, the measure goes to pocket-book concerns that are indisputably at the top of voters' minds this election. Being as clear and informative as possible is particularly important when dealing with issues that have

a specific electoral valiance. *Cf. In re Titles, Ballot Titles, & Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, & #128, 2022 CO 37, ¶¶ 21-22* (considering the “unsettled” policy choices of a measure’s separate subjects, including prior voter initiative on subject); *In re Title, Ballot Title & Submission Clause for Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238, 241-42 (Colo. 1990)* (reversing titles as voters needed to know the definition of abortion and the meaning of a “new standard”). Voters need to understand not only who benefits from the measure (“existing customers”) and the benefit conferred (protection from certain infrastructure charges) but the circumstances under which those people benefit—in other words, when this measure applies. *See In re Title, Ballot Title & Submission Clause, and Summary for 1999-2000 #104, 987 P.2d 249, 259 (Colo. 1999)* (holding titles inadequate for failure to identify the judges the measure applied to).

C. Substance trumps brevity.

Finally, Proponents and the Board each note that the titles are “brief.” (Proponents’ Br. at 13; Title Bd.’s Br. at 15.) While “brevity” is a consideration in title writing, the Court has been clear: substance trumps brevity. “[I]f a choice must be made between brevity and a fair description of essential features of a proposal,

the decision must be made in favor of full disclosure to the registered electors.” *In re Title, Ballot Title and Submission Clause, and Summary Pertaining to Proposed Election Reform Amendment*, 852 P.2d 28, 32 (Colo. 1993). Voter understanding should not be sacrificed for a shorter title (especially when addressing the applicability clause would not add considerably to the titles’ length).

CONCLUSION

For the reasons given above and in Petitioner’s opening brief, the Board erred in finding the measure had a single subject, and the Court should reverse for want of jurisdiction. In the alternative, the Court should reverse and remand to the Board to set a clear title.

Respectfully submitted this 14th day of May, 2026.

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CERTIFICATE OF SERVICE

I, Leni Charles, hereby affirm that a true and accurate copy of the **PETITIONER'S ANSWER BRIEF** was sent electronically via Colorado Courts E-Filing this day, May 14, 2026, to the following:

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