

<b>SUPREME COURT, STATE OF COLORADO</b> <b>2 East 14<sup>th</sup> Avenue</b> <b>Denver, Colorado 80203</b>	DATE FILED May 14, 2026 6:03 PM
Original Proceeding Pursuant to Colo. Rev. Stat. §1-40-107(2) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2025- 2026 #312  <b>Petitioner:</b> EDWARD ANDREW LEIGHTY  v.  <b>Respondents:</b> SIDRA AGHABABIAN AND JESSICA ARHONTOULIS  and  <b>Title Board:</b> THERESA CONLEY; KURT MORRISON; and CHRISTY CHASE	▲ COURT USE ONLY ▲
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<p style="text-align: center;"><b>ANSWER BRIEF OF RESPONDENTS SIDRA AGHABABIAN AND  JESSICA ARHONTOULIS IN SUPPORT OF  PROPOSED INITIATIVE 2025-2026 #312</b></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 the applicable word limits set forth in C.A.R. 28(g) because it contains 1,621 words.

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A), because it contains under a separate heading before the discussion of the issue, as applicable, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

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.

By: /s/ Martha M. Tierney

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Respondents Sidra Aghababian and Jessica Arhontoulis, designated representatives of the proponents of Proposed Initiative 2025-2026 #312 (the “Proposed Initiative”), through undersigned counsel, respectfully submit their Answer Brief as follows:

## **ARGUMENT**

### **I. The Title Board Properly Found That the Proposed Initiative Complies with the Single Subject Requirement.**

#### **A. The Proposed Initiative Contains a Single Subject.**

Petitioner asserts in his Opening Brief that Initiative #312 violates the single subject requirement because it alters the “separate constitutional authority of (a) the state government and (b) municipalities that own utilities to regulate and approve utility rates[.]” *See Petitioners’ Op. Brief*, p. 2. The Title Board correctly found that the Proposed Initiative contains a single subject: “prohibiting utilities from raising utility bill rates of existing customers to pay for any costs associated with extending a natural gas pipeline to serve new customers or later removing or retiring the extended pipeline.” That is the single subject of the measure and the entirety of the ballot title.

The Proposed Initiative does not change the authority of the Public Utilities Commission (“PUC”) to regulate investor-owned utilities, or of municipalities to regulate municipally-owned utilities. These governmental authorities retain their

existing authority to set rates and oversee the utilities' provision of services to their customers. The PUC will still fulfill a consumer protection role, and municipal bodies overseeing municipally-owned utilities will still be subject to the whims of the electorate to hold their leaders accountable.

**B. The Proposed Initiative Does Not Surreptitiously Ater Government Authority.**

Petitioner contends that because the Constitution addresses utility regulation and allows municipalities to have the power to regulate municipal utilities, and the Proposed Initiative changes the Constitution, that violates the single subject requirement. But Petitioners skip over the fact that the Proposed Initiative amends the Constitution in one very specific, narrow manner, to prohibit all utilities from passing along to existing customers the costs of extending or later decommissioning a natural gas pipeline to serve new customers. To the extent that the Proposed Initiative alters the authority of utilities to pass along certain costs to their ratepayers, that is precisely the single subject of the measure, and it applies to all utilities uniformly.

As Proponents discussed in their Opening Brief, laws to direct or restrain utilities' conduct are commonplace and have been enacted by citizens through the initiative process, and by the General Assembly through the legislative process. Moreover, it is the norm for such laws to simultaneously impact both investor-

owned utilities regulated by the PUC, and municipally-owned utilities regulated by the municipality. *See Respondents' Op. Brief*, pp. 7-8. Such laws, like the Proposed Initiative, do not change the fundamental structure of regulation of utilities by the PUC or the municipal body, as applicable.

The cases relied on by Petitioner to support his assertion that the Proposed Initiative “combines substantive new legal standards with alterations in government authority” are readily distinguishable. Proponents discussed *In re Title, Ballot Title and Submission Clause for 2009-2010 #91*, 235 P.3d 1071 (Colo. 2010), in their Opening Brief. *See Respondents' Op. Brief*, at pp. 9-10. The key distinguishing point is that in #91, the proposed measure created and administered a beverage container tax, *and* it prohibited the General Assembly from exercising its legislative authority over basin roundtables and the interbasin compact committee until the year 2015, *and* it embedded these entities within the water sections of the Colorado Constitution, vesting them with significant new authority. *Id.* at 1074. In contrast, the Proposed Initiative only does one thing – it amends the Constitution to prohibit all utilities from passing along to existing customers the costs of extending or later decommissioning a natural gas pipeline to serve new customers. The Proposed Initiative does not couple provisions proposing a change in governmental powers with another purpose.

Proponents also discussed *In re Title, Ballot Title & Submission Clause for 1997-1998 #64*, 960 P.2d 1192 (Colo. 1998) in their Opening Brief. See *Respondents' Op. Brief*, at pp. 10-11. In that case, this Court found that the reallocation of authority and control over Denver county court judgeships did not was a separate subject from provisions changing the qualifications of judicial officers. *Id.* at 1198. Again, in contrast to *In re 1997-1998 #64*, the Proposed Initiative does not combine provisions proposing a change in governmental powers with another purpose.

Finally, Petitioner's reliance on *In re Title, Ballot Title and Submission Clause for 2003-2004 # 32 & # 33 and Failure to Set Title for 2003-2004 # 21 & # 22*, 76 P.3d 460 (Colo. 2003), is also misplaced. The initiatives that this Court examined in that case had the purpose of changing procedures for initiative and referendum petitions, along with an unrelated provision preventing attorneys from serving as members of the title board. *Id.* at 462-463. The Proposed Initiative, in contrast, only prohibits utilities from raising utility bill rates of existing customers to pay for any costs associated with extending a natural gas pipeline to serve new customers or later removing or retiring the extended pipeline.

Petitioner continues to focus on the effects that the Proposed Initiative would have on other laws, which is not properly under review at this stage. "The effects

this measure could have on Colorado law if adopted by voters are irrelevant to [the Court's] review of whether the proposed initiative and its Titles contain a single subject.” *In re Title, Ballot Title, & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 17 (internal citations omitted). When considering whether an initiative comports with the single subject requirement, the Court does “not address the merits of the proposed initiative or predict how it may be applied if adopted by the electorate. At its core, Petitioner’s argument is that the Proposed Initiative is a poor policy choice. But that is not relevant to this Court’s review. *See In re Title, Ballot Title & Submission Clause for 2007-2008 # 57*, 185 P.3d 142, 148 (Colo. 2008) (Court’s role is not to determine the merits of a proposed initiative). Under the Proposed Initiative, utilities will still set rates under processes set forth in existing law.

Finally, to the extent Petitioner contends that the General Assembly enacted later legislation to amend Amendment 37 or amend its own statutes to exempt municipalities from utility regulation, and that such amendments further support his argument, instead they only further makes Proponents’ point. These were not single subject violations, but rather later policy choices made by the Colorado General Assembly, in response to unknown and unsubstantiated pressure on the General Assembly.

## **II. The Title Board Set a Title that Satisfies the Clear Title Requirement.**

Petitioner's arguments about why the title for the Proposed Initiative is misleading are not persuasive. The Title Board's duty in setting a title is to summarize the central features of a measure. *In re 2013-2014 #90*, 2014 CO 63. ¶ Petitioner's latest contention that the Proposed Initiative needs to inform voters how it will interact with franchise agreements or that the timing of when a municipality enters into a franchise agreement may result in the different timing for the measure's applicability in different areas of the state do not rise to the level of a misleading title. The Title Board is required to summarize the central features of a proposed initiative fairly, but it "need not explain the meaning or potential effects of the proposed initiative on the current statutory scheme." *In re Title, Ballot Title, & Submission Clause for 2015-2016 #73*, 2016 CO 24, ¶ 23.

Petitioner's arguments about the applicability clause are speculative. Importantly, franchise agreements do not set utility rates; rather, that is done through the designated rate-setting process. Colo. Const. Art. XXV. Instead, franchise agreements are agreements that allow the utility to provide service to a particular community.

The Proposed Initiative will become effective on and after the date of the official declaration of the vote and proclamation of the governor. Colo. Const. art

V, §1(4)(a). The applicability clause’s language about “conduct occurring ... after the effective date of this measure” refers to the rate-setting procedures of the PUC, co-op boards, and municipal utilities. As a result, the Proposed Initiative’s limits will apply to any rate-setting processes after the effective date. While ratepayers across the state might have different timelines for when potential savings from the initiative apply, depending on when their utility changes its rates, the Title Board was not required to include this detail in its title, and including it might have resulted in more voter confusion than excluding it. The Title Board is not required to entertain every speculative interpretation in setting a title. *See In re Proposed Initiated Constitutional Amendment Concerning the Fair Treatment of Injured Workers Amendment*, 873 P.2d 718, 720-721 (Colo.1994).

The Title Board exercised its discretion to craft a title that seeks to avoid “public confusion,” is “brief” and “unambiguously states the principle of the provision sought to be added, amended, or repealed.” §1-40-106(3)(b), C.R.S. This Court should defer to the Title Board’s discretion. *In re Title, Ballot Title, & Submission Clause for 1999-2000 #256*, 12 P.3d 246, 255 (Colo. 2000) (“In reviewing the actions of the Board, we grant great deference to the board’s broad discretion in the exercise of its drafting authority.”) “While titles must be fair, clear, accurate and complete, the Title Board is not required to set out every detail

of an initiative.” *In re Title, Ballot Title, & Submission Clause for 2007-2008 #62*, 184 P.3d 52, 60 (Colo. 2008). The title for Initiative #312 satisfies this test because the claimed deficiency in this title is a detail rather than a central feature of this initiative.

### CONCLUSION

The Proponents respectfully request the Court to uphold the actions of the Title Board regarding Proposed Initiative 2025-2026 #312.

Respectfully submitted this 14<sup>th</sup> day of May, 2026.

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ANSWER BRIEF OF RESPONDENTS SIDRA AGHABABIAN AND JESSICA ARHONTOULIS IN SUPPORT OF PROPOSED INITIATIVE 2025-2026 #312** was electronically served via e-mail or via the Colorado Courts E-Filing System on the 14<sup>th</sup> day of May, 2026 to the following:

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