

<p>SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, Colorado 80203</p>	<p>DATE FILED May 8, 2026 5:00 PM</p>
<p>Original Proceeding Pursuant to C.R.S. § 1-40-107(2)</p> <p>Appeal from the Colorado Ballot Title Setting Board</p> <p>Petitioners: Lynn Granger and Carly West</p> <p>v.</p> <p>Respondents: Sidra Aghababian and Jessica Arhontoulis</p> <p>Colorado Ballot Title Setting Board: Theresa Conley, Christy Chase, and Kurt Morrison.</p>	<p>▲ COURT USE ONLY</p>
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<p align="center">PETITIONERS' OPENING BRIEF</p>	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, 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) or C.A.R. 28.1(g).

It contains 4,171 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

For each issue raised by the appellant, the brief contains under a separate heading before the discussion of the issue, 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.

In response to each issue raised, the appellee must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

/s/ Jason R. Dunn

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Pursuant to section 1-40-107(2), Petitioners Lynn Granger and Carly West (collectively, “Petitioners”), through undersigned counsel, respectfully petition this Court to review the title, ballot title, and submission clause set by the Colorado Ballot Title Setting Board (the “Title Board”) for Proposed Initiative 2025-2026 #310 (the “Initiative” or “Initiative #310”).

ISSUES PRESENTED FOR REVIEW

- A. Whether the Title Board lacked jurisdiction to set a title for Initiative #310 because changes made to the measure after the review and comment hearing substantially altered the intent and meaning of the measure’s central features requiring that it be resubmitted for additional review and comment.
- B. Whether the Title Board lacked jurisdiction to set a title for Initiative #310 because changes were made to the measure that were not in direct response to comments made at the review and comment hearing, in violation of C.R.S. § 1-40-105(2).
- C. Whether the Title Board erred by adopting a title for Initiative #310 that misleads voters and fails to accurately describe the measure.

STATEMENT OF THE CASE

Initiative #310—which would impose joint and several liability on oil and gas operators—is a self-proclaimed retaliatory ballot measure filed by proponents associated with Conservation Colorado aimed at

severely impacting the oil and gas industry.¹ It is part of a package of four ballot measures (Initiatives ##310–313) filed specifically in response to Initiative #177, a measure backed by Advance Colorado that would provide a constitutional right for consumers to purchase natural gas. Conservation Colorado filed these four ballot measures because they perceive Initiative #177 to violate the 2024 agreement under which the environmental community and the state’s oil and gas industry agreed to withdraw competing energy ballot measures. Advance Colorado, however, is not an organization representing the oil and gas industry. Neither Petitioner is affiliated with Advance Colorado or supports Initiative #177.

Initiative #310 was submitted at the eleventh hour to make the final Title Board hearings for the 2026 ballot. As a result, it was not carefully drafted. It was originally drafted to provide an exception to the

¹ See *Release: Conservation Colorado holds polluters accountable, new ballot measures would make fossil fuel polluters pay for the damage they cause*, CONSERVATION COLO. (Mar. 19, 2026), <https://conservationco.org/press-release/release-conservation-colorado-holds-polluters-accountable-new-ballot-measures-would-make-fossil-fuel-polluters-pay-for-the-damage-they-cause>.

prohibition on ex post facto laws in section 11 of article II of the Colorado Constitution for joint and several liability on current and previous oil and gas operators for their operations. After Legislative Council and the Office of Legislative Legal Services provided comments as part of the review and comment process questioning whether the measure would be constitutional, Respondents pivoted. The version submitted to the Title Board removed the measure's contents from article II and placed it instead in a new constitutional section—section 17 of article XVIII. It also removed language applying joint and several liability to “previous” oil and gas operators. And, despite no comment at the review and comment hearing on the subject, the amended version added language that would apply joint and several liability to operators’ “successors in interest.”

The amended version of Initiative #310 is an entirely different measure than was originally submitted for review and comment. It must therefore be resubmitted to Legislative Council for additional review and comment before the Title Board can consider it. Consequently, the Court should reverse the Title Board's denial of Petitioners' Motion for

Rehearing, hold that the Title Board does not have jurisdiction to set title for Initiative #310, and remand the measure to Respondents.

Respondents filed Initiative #310 with Legislative Council staff on March 19, 2026, one day before the deadline to submit proposals for the 2026 election. A review and comment hearing was held on April 2, 2026, after staff from Legislative Council and the Office of Legislative Legal Services provided their Review & Comment Memorandum on March 27, 2026. Initiative #310's proponents then filed original, amended, and final versions of the measure with the Title Board on April 2, 2026.

At the Initiative's April 15, 2026 initial hearing, Petitioners challenged whether the Title Board had jurisdiction because Respondents made significant changes to the measure after the review and comment hearing, which were so substantial that it made Initiative #310 into an entirely different measure and some of which were not in response to the Review & Comment Memorandum and comments made during the review and comment hearing. Nevertheless, the Title Board, by a vote of 3-0, determined that it had jurisdiction and set a title. After Petitioners filed a motion for rehearing challenging the measure on

jurisdictional and title grounds, the Title Board held a rehearing on April 23, 2026. The Title Board voted 3-0 to deny the motion.

Petitioners subsequently filed this appeal. Petitioners specifically request this Court hold that the Title Board does not have jurisdiction to set title for the Initiative because changes made to the measure after review and comment were so substantial that they in essence created an entirely different measure and because some changes were unresponsive to review and comment. Alternatively, Petitioners request that this Court hold that the title set by the Title Board violates the clear title requirement.

SUMMARY OF THE ARGUMENT

This appeal raises two issues: (1) whether proponents can alter a measure after review and comment in a manner unresponsive to review and comment and in a manner that substantially alters the intent and meaning of the measure; and (2) whether Initiative #310's title clearly reflects the contents of the measure and would not mislead voters. Both issues should prevent Initiative #310 from moving forward.

As to the first issue, the Title Board lacked jurisdiction to set a title for Initiative #310 due to the significant changes made after review and comment, one of which was not made in response to review and comment. These changes transformed the proposal from (a) making an exception to the ban on ex post facto laws permitting joint and several liability for current and prior oil and gas operators to (b) imposing joint and several liability on current oil and gas operators and their successors in interest. The amended version of Initiative #310 is thus an entirely new measure requiring additional review and comment. Allowing such a measure to proceed without further review and comment is in direct conflict with the intent of the statutory scheme governing the citizen-initiated ballot measures process in Colorado, which is designed to ensure that voters understand the contents of initiatives in advance of their petition circulation. In addition, Respondents' substantial alteration of the text of Initiative #310 to add "their successors in interest" was unresponsive to review and comment, depriving the Title Board of jurisdiction.

As to the second issue, Initiative #310's title as currently constructed does not correctly and fairly express the true intent and

meaning of the measure, in contravention of the clear title requirement. Specifically, the title (a) does not make clear that the measure applies only to conduct or contracts entered into after the effective date of the measure; (b) improperly uses “subsequent owners” as a proxy for “successors in interest”; and (c) fails to describe for voters what is meant by the legal term “joint and several liability.” The title as written thus obfuscates the true purpose, intent, and impact of the measure.

Given these flaws, the measure, and the title as adopted, cannot be presented to voters. Therefore, Petitioners request that this Court determine that the Title Board lacked jurisdiction to set a title for Initiative #310. If this Court decides to affirm the Title Board’s determination on jurisdiction, then Petitioners request that this Court remand the measure back to the Title Board to amend the title so that voters are not misled.

STANDARD OF REVIEW

This Court is vested with authority to review the rulings of the Title Board. C.R.S. § 1-40-107(2). As part of this review, this Court “employ[s] all legitimate presumptions in favor of the propriety of the [Title] Board’s

action.” *In re Title, Ballot Title, & Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 645 (Colo. 2010). The Court does not “determine the initiative's efficacy, construction, or future application,” but “must examine the proposal sufficiently to enable review of the Title Board's action.” *In re Title, Ballot Title, Submission Clause for 2009-2010 No. 91*, 235 P.3d 1071, 1076 (Colo. 2010). While the Court’s “review of actions taken by the Title Board is of a limited scope,” *In re Title, Ballot Title, & Submission Clause for 2007-2008 #62*, 184 P.3d 52, 58 (Colo. 2008), the interpretation of a statutory provision is a question of law that this Court reviews de novo, *see, e.g., Robinson v. Legro*, 325 P.3d 1053, 1056 (Colo. 2014). And “the proponents of an initiative bear the ultimate responsibility for formulating a clear and understandable proposal for the voters to consider.” *In re Title, Ballot Title, & Submission Clause for 2007-2008 #62*, 184 P.3d at 57 (quotation omitted).

An initiative’s title must “correctly and fairly express [its] true intent and meaning,” C.R.S § 1-40-106(3)(b), and “should allow voters, whether or not they are familiar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose the

proposal,” *In re Title, Ballot Title & Submission Clause for 2015–2016* #73, 369 P.3d 565, 568 (Colo. 2016).

ARGUMENT

I. The Title Board erroneously considered changes made after the review and comment hearing.

The changes made to Initiative #310 after review and comment were improper for two reasons. First, they substantially altered the measure such that the amended version of Initiative #310 constitutes an entirely new measure requiring resubmittal. Second, the changes made to the measure went beyond the changes explicitly discussed at the review and comment hearing, contrary to statutory limitations. Thus, the Title Board lacked jurisdiction to set title on Initiative #310.²

² Petitioners preserved both arguments in their motion for rehearing, (Initiative #310 Pet. for Review, Ex. 1 at 2–4, and at the initial Title Board hearing (*see* Title Board Hearing (April 15, 2026), <https://csos.granicus.com/player/clip/562>) and rehearing (Title Board Rehearing (April 23, 2026), <https://csos.granicus.com/player/clip/570>).

A. Respondents so substantially altered the intent and meaning of the Initiative after review and comment that it became an entirely new measure requiring a new review and comment hearing.

Section 1-40-105(1) of the Colorado Revised Statutes requires that new proposals for citizen-initiated ballot measures be submitted for comment at a public meeting (*i.e.*, the review and comment hearing). Further, Section 1-40-105(2) allows proponents to amend the measure after review and comment and before submission to the Title Board, but “[i]f any substantial amendment is made . . . , other than an amendment in direct response to the comments of the directors of the legislative council and the office of legislative legal services, the amended petition must be resubmitted to the directors for comment” Based on the above, this Court has held that if a ballot measure makes substantial changes after review and comment that fundamentally alter the nature of the measure, then the measure must be resubmitted for additional review and comment, regardless of whether those changes were made in response to issues raised during the review and comment hearing. *In re Proposed Initiated Constitutional Amendment Concerning Ltd. Gaming in the Town of Idaho Springs*, 830 P.2d 963, 968 (Colo. 1992) (“*Idaho Springs*”).

In *Idaho Springs*, this Court explained that when “the adoption of language in a subsequent draft of a proposal [] substantially alters the intent and meaning of central features of the initial proposal,” “the revised document in effect constitutes an entirely different proposal” and “must be submitted to the legislative offices for comment.” *Id.* at 968. “The public’s right to understand the contents of an initiative in advance of its circulation would be completely eradicated if the intent and meaning of the central features of a proposal submitted to the Board for the purpose of fixing a title thereto is substantially different from the intent and meaning of the central features of an earlier version thereof that was submitted to the legislative offices.” *Id.*; see also *In re Title, Ballot Title & Submission Clause, & Summary for 1999-00 #256*, 12 P.3d 246, 251 (Colo. 2000) (“The requirement that the original draft be [resubmitted] permits the proponents to benefit from the experience of experts in constitutional and legislative drafting, and allows the public to understand the implications of a proposed initiative at an early stage in the process.”) Where the “substantial alteration of the intent and meaning of a central feature of the initial proposal in effect creates a new

proposal that must be submitted to the legislative offices for comment at a public meeting[,] . . . the absence of such meeting [deprives] the Board [of] authority to fix a title for the proposed amendment.” *Idaho Springs*, 830 P.2d at 968.

Although the relevant statute at issue in *Idaho Springs* was amended shortly thereafter, the principles in the Court’s holding still hold true. *See* C.R.S. § 1-40-105(2). The statutory scheme for citizen-initiated ballot measures, even after amendment, expressly requires that all new measures first go through review and comment. Such requirement acts as a safeguard for Colorado voters. Respondents deliberately skirted this statutory safeguard by completely and substantively altering Initiative #310 after review and comment, even though some of the changes were spurred by questions raised in the Review & Comment Memorandum.

Here, the amended version of Initiative #310 is an entirely new proposal divorced from Initiative #310’s original intent. As noted above, Initiative #310 was originally drafted to provide an exception to the prohibition on ex post facto laws, or laws with a retrospective effect, in

section 11 of article II of the Colorado Constitution. It would have imposed joint and several liability on *past* and current oil and gas operators for damages resulting from their *prior* and current operations. In other words, the original version of Initiative #310 would not only have imposed joint and several liability for existing claims against oil and gas operators for damages stemming from current operations, but it also would have extended that liability to past conduct. As an exception to the constitutional ex post facto prohibition, the original Initiative #310 not only represented a major change to the state's constitution but also would have established an entirely new aspect of liability not previously recognized under Colorado law. Obviously, it presented a dramatic and impactful change to Colorado law and would have fundamentally altered the landscape for oil and gas operators in Colorado. That was its intent.

Although the proposed significant constitutional change was noted in the Review & Comment Memorandum and discussed at the review and comment hearing, that does not provide Initiative #310's proponents a free pass to present an entirely different type of measure for the Title Board review. Legislative Council and the Office of Legislative Legal

Services identified the major purpose of the measure as “to apply joint and several liability to current and *previous* oil and gas operators, owners, or producers for any damages resulting from oil and gas operations, including but not limited to personal injury, property damage, and environmental harm.” (See Review & Comment Memorandum, at 2 (emphasis added).) This is consistent with how Conservation Colorado characterized the measure: “Joint and Several Liability for Past and Current Operations.”³

Comments in the Review & Comment Memorandum and commentary at the review and comment hearing, however, took issue with the ex post facto aspect of Initiative #310, as written. (Review and Comment Hearing at 10:06:37–10:08:25 (April 2, 2026), <https://tinyurl.com/38jxc3xa>.) According to Legislative Council and the Office of Legislative Legal Services, Initiative #310, as positioned as an

³ See *Release: Conservation Colorado holds polluters accountable, new ballot measures would make fossil fuel polluters pay for the damage they cause*, CONSERVATION COLO. (Mar. 19, 2026), <https://conservationco.org/press-release/release-conservation-colorado-holds-polluters-accountable-new-ballot-measures-would-make-fossil-fuel-polluters-pay-for-the-damage-they-cause>.

ex post facto law, violated the Colorado Constitution. *See* COLO. CONST. art. II, § 11. Respondents stated they would address such issues in an amended version.

Inapposite to this identified purpose, but to assuage staff's concern, Respondents rewrote Initiative #310 to make it forward-looking. Specifically, Respondents struck the entire ex post facto aspect of the measure, placed the measure in a new constitutional section, and removed the Initiative's applicability to "previous oil and gas operators" by instead applying it only to current operators "and their successors in interest." As part of this, Respondents also added an applicability clause specifying that the measure "applies to conduct occurring or contracts entered into on or after the effective date of this measure." Although some of the changes made were in response to review and comment, they substantially altered the intent and meaning of Initiative #310, warranting a subsequent review and comment on this entirely new measure. Before review and comment, Initiative #310 was an amendment to Section 11 of Article II of the Colorado Constitution, providing an exception to the prohibition on ex post facto laws. After

review and comment, Initiative #310 now adds a new Section 17 to Article XVIII of the Colorado Constitution—the “Miscellaneous” Article in the Colorado Constitution.

Therefore, the changes made to Initiative #310 after review and comment constitute a “substantial alteration of the intent and meaning of a central feature of the initial proposal in effect creat[ing] a new proposal.” *Idaho Springs*, 830 P.2d at 968. Initiative #310 has switched from being retroactively applicable to forward-looking, and thus has a substantially different intent, meaning, and impact than the version originally submitted for review and comment. While Respondents are certainly entitled to change the policy objectives of their initiative, what they are not entitled to do is change horses halfway through the ride. Accordingly, such conduct necessitates resubmittal of the measure for review and comment. As such, the Title Board lacked jurisdiction to hear the measure.

B. Adding “successors in interest” to Initiative #310 was not a change made in direct response to review and comment.

In addition to fundamentally switching Initiative #310’s intent and purpose, the amended version of the measure made a significant change not in response to review and comment—applying Initiative #310 to current oil and gas operators *and their successors in interest*. Neither the Review & Comment Memorandum nor commentary at the review and comment hearing suggested that Respondents make this change. (*See* Review & Comment Hearing (April 2, 2026), <https://tinyurl.com/38jxc3xa>.) While at the review and comment hearing, proponents indeed discussed deleting “owners” and “producers” from the measure, substituting “successors in interest” was not expressly mentioned. (*Id.*) Similarly, such change was not recommended in the Review & Comment Memorandum.

Respondents and the Title Board will likely argue that adding “successors in interest” is consistent with removing the retrospective aspect of the original Initiative #310. But this alteration is different. The proponents did not need to add “and their successors” to divorce the

measure from its original placement as an exception to the prohibition on ex post facto laws. They simply could have kept joint and several liability as applying to current oil and gas operators. They chose not to.

Changes, such as the addition of “successors in interest,” that are not made in direct response to review and comment are impermissible. *See Matter of Title, Ballot Title & Submission Clause, & Summary for 1997-98 No. 109*, 962 P.2d 252 (Colo. 1998) (upholding the Title Board’s decision to decline to set title where proponents failed to comply with statutory submission requirements). Under C.R.S. § 1-40-105(2), the Title Board lacks jurisdiction to set title on such measures. Accordingly, the measure must be resubmitted, and the Title Board erred in considering it.

II. Initiative #310’s title fails to accurately describe the measure and would mislead voters.

Even if this Court were to affirm that the Title Board has jurisdiction to set a title, the title set for Initiative #310 violates the clear title requirement. The title set by the Title Board for Initiative #310 is:

An amendment to the Colorado Constitution holding oil and gas operators, and subsequent owners of their operations, jointly and severally

liable for any damages, including personal injury, property damage, and environmental harm, resulting from their oil and gas operations.

(Initiative #310 Pet. for Review, Ex. 1 at 8.)

A measure's title must "correctly and fairly express the true intent and meaning" of the measure. *See* C.R.S. § 1-40-106(3)(b). The Title Board has the "duty [] to ensure that the title, ballot title and submission clause, and summary fairly reflect the proposed initiative so that petition signers and voters will not be misled into support for or against a proposition by reason of the words employed by the board." *In re Ballot Title 1997–1998 # 62*, 961 P.2d 1077, 1082 (Colo. 1998) (quoting *In re Proposed Initiated Constitutional Amendment Concerning the Fair Treatment of Injured Workers Amendment*, 873 P.2d 718, 719 (Colo. 1994)); *see also In re Title, Ballot Title and Submission Clause, & Summary for 1999-2000 No. 258(A)*, 4 P.3d 1094, 1099 (Colo. 2000) ("Eliminating a key feature of the initiative from the titles is a fatal defect if that omission may cause confusion and mislead voters about what the

initiative actually proposes.”). Here, the title set for Initiative #310 is misleading for at least three reasons.⁴

First, the title does not indicate at all that the amended version of Initiative #310 applies only to conduct or contracts entered into after the effective date of the measure. As described above (*see supra* Section I.A.), Respondents added an applicability clause in the amended version of Initiative #310 specifying that the measure applies only to “conduct occurring or contracts entered into on or after the effective date of this measure.” But as currently written, the title appears to indicate that the timeline for joint and several liability is the duration of oil and gas operations on the site. The title therefore must be changed to clarify this limiting aspect of the measure. For example, the title should specify that the measure applies to “current and future” oil and gas operations. Otherwise, the title misleads voters into incorrectly thinking that it would hold oil and gas operators jointly and severally liable for their past

⁴ Petitioners preserved this argument in their motion for rehearing, (Initiative #310 Pet. for Review, Ex. 1 at 4–5), and at the Title Board rehearing (Title Board Rehearing (April 23, 2026), <https://csos.granicus.com/player/clip/570>).

operations, even if damages associated with such past operations do not manifest until after the measure's effective date.

Second, the title states that the measure imposes liability on “oil and gas operators, and subsequent owners of their operations.” The text of the measure, however, imposes liability on current oil and gas operators “and their successors in interest.” While “subsequent owners” may be more commonly understood by voters, “successors in interest” encompasses a broader group than “subsequent owners.” For example, a successor in interest may indeed be an “owner” of the operations, but a successor in interest may also be a person or entity that acquires rights, obligations, or even a fractional ownership interest in the operations. Based on the current title language, voters may be confused that this measure would make a broader group subject to joint and several liability. Thus, the title should use the same or similar language to that in Initiative #310 in order to adequately describe the measure's reach.

Third, the term “joint and several liability” is a legal term not commonly understood by the average voter. Inclusion of such legalese will lead to voter confusion. Instead, the title should include a plain

language definition of the term that allows voters to fully understand the impact of the measure, especially considering that joint and several liability is not defined in the measure. For example, the title could convey in plain terms that the measure would make oil and gas operators and their successors “collectively and individually responsible for the entire amount of damages, no matter how much that party is at fault.” Proponents themselves suggested the addition of similar language—changing “joint and several” to “collectively or individually responsible”—at the Title Board Rehearing. (*See* Title Board Rehearing at 37:25–38:00 (April 23, 2026).)

Without these changes, Initiative #310’s title is incomplete and misleading, and must be amended to express the measure’s true intent and meaning.

CONCLUSION

Petitioners respectfully request the Court reverse the Title Board’s denial of Petitioners’ Motion for Rehearing and hold that the Title Board does not have jurisdiction to set title for Initiative #310 because: (1) proponents made substantial changes to the measure after review and

comment that meaningfully altered its intent and effect such that the amended version is an entirely new measure; and (2) proponents made changes to the measure after review and comment that were not responsive to review and comment. For those reasons, the Court should vacate the Title Board's decision and remand the measure to the Respondents. And even if the Court holds that the Title Board did have jurisdiction to set title, the Court should nonetheless vacate the Title Board's title because it violates the clear title requirements, and direct the Title Board to modify the title to address the concerns raised herein.

Respectfully submitted May 8, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2026, I electronically filed a true and correct copy of the foregoing **PETITIONERS' OPENING BRIEF** via the Colorado Courts E-Filing system which will send notification of such filing and service upon counsel of record:

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