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| **SUPREME COURT, STATE OF COLORADO**<br>**2 East 14th Avenue**<br>**Denver, Colorado 80203** | DATE FILED<br>May 8, 2026 3:46 PM |
| Original Proceeding<br>Pursuant to Colo. Rev. Stat. §1-40-107(2)<br>Appeal from the Ballot Title Board | |
| In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2025-2026 #310<br><br>**Petitioners:** LYNN GRANGER AND CARLY WEST<br><br>v.<br><br>**Respondents:** SIDRA AGHABABIAN AND JESSICA ARHONTOULIS<br><br>and<br><br>**Title Board:** THERESA CONLEY; KURT MORRISON; and CHRISTY CHASE | ▲COURT USE ONLY▲ |
| *Attorneys for Respondents*<br>Martha M. Tierney, No. 27521<br>Tierney Lawrence Stiles LLC<br>225 E.16th Ave, Suite 350<br>Denver, CO 80203<br>Phone: (303) 356-4870<br>E-mail: mtierney@tls.legal | Case No.: 2026SA150 |

**OPENING BRIEF OF RESPONDENTS SIDRA AGHABABIAN AND JESSICA ARHONTOULIS IN SUPPORT OF PROPOSED INITIATIVE 2025-2026 #310**

## 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 2,645 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 #310 (the "Proposed Initiative"), through undersigned counsel, respectfully submit their Opening Brief as follows:

## STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The issues presented for review appear to be the following:

Whether the Title Board lacked jurisdiction to set a title for the Proposed Initiative because changes made to the measure after the review and comment hearing substantially altered the intent and meaning of the measure's central features by switching the measure from providing an exception to the prohibition on ex post facto laws for joint and several liability for oil and gas operators to applying to current and future oil and gas operators, and thus in essence created an entirely different measure requiring that it be resubmitted for additional review and comment.

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).

Whether the Title Board erred by adopting a title for Initiative #310 that misleads voters and fails to accurately describe the measure.

*See Petition*, p.4.

## STATEMENT OF THE CASE AND FACTS

Respondents Sidra Aghababian and Jessica Arhontoulis are the designated representatives of the proponents of the Proposed Initiative ("Proponents"). Proponents submitted their Proposed Initiative to the Title Board for the setting of a title and submission clause pursuant to § 1-40-106, C.R.S., on April 2, 2026. *See Record*, p. 9.

The Title Board held a hearing on April 15, 2026, where it determined that the Proposed Initiative contained a single subject pursuant to Colo. Const. art. V, §1(5.5) and § 1-40-106.5, C.R.S., and set a title. *Record*, p. 7. Petitioners Lynn Granger and Carly West filed a Motion for Rehearing contending that the Title Board lacked jurisdiction to set a title because the Proponents made substantial changes to the measure that were not in response to comments from the Office of Legislative Legal Services or the Legislative Council Staff made during the Review and Comment hearing, and that the title as set by the Title Board was misleading. *Record,* pp. 2-6. The Title Board held a rehearing on April 23, 2026,

and denied the Motion for Rehearing in its entirety. *Record*, p. 8. The title set by the Title Board is as follows:

> Shall there be 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?

*Record*, p.8. Petitioners timely filed a Petition for Review of the actions of the Title Board with this Court.

## SUMMARY OF THE ARGUMENT

The Title Board properly exercised its broad discretion in setting title on the Proposed Initiative. Petitioners contend that the Title Board lacked jurisdiction to set a title because the Proponents made substantial changes to the language of the Proposed Initiative that were not in response to comments made by the Office of Legislative Legal Services or the Legislative Council Staff ("Legislative Offices"), and as a result, Proponents were required to resubmit their measure for another Review and Comment hearing. Petitioners' argument fails because the record is clear that the changes that Proponents made to the text of the measure and to its location in the Colorado Constitution were in response to comments and discussions with the Legislative Offices in the Review and Comment memo and in the Review and Comment hearing.

Petitioners next contend that the title is misleading. Petitioners object that the title does not alert voters to its prospective application, to the omission of the legal term "successors in interest," and to the use of the phrase "jointly and severally liable" in the title. These concerns do not override the discretion of the Title Board to draft a brief title that captures the major features of the measure.

The Title Board is only obligated to fairly summarize the central points of a proposed measure and need not refer to every nuance and feature of the proposed measure. While a title must be fair, clear, accurate and complete, it is not required to set out every detail of an initiative.

Accordingly, there is no basis to set aside the Title, and the decision of the Title Board should be affirmed.

## ARGUMENT

### I. The Title Board Had Jurisdiction to Set a Title.

#### A. Standard of Review and Preservation.

The Title Board is vested with considerable discretion in setting the title, ballot title and submission clause, and summary. *In re Title, Ballot Title & Submission Clause, and Summary Pertaining to the Campaign and Political Finance Initiative, etc.*, 830 P.2d 954, 954 (Colo. 1992).

Colo. Const. art. V, § 1(5) requires that the original draft of a proposed initiative be submitted to the legislative research and drafting offices of the General Assembly or review and comment. If the proponents of a proposed initiative seek to amend it after the meeting with the Legislative Offices, they must follow specific statutory requirements. Section 1-40-105(2), C.R.S. states, in relevant part:

> After the review and comment meeting but before submission to the secretary of state for title setting, the proponents may amend the petition in response to some or all of the comments of the directors of the legislative council and the office of legislative legal services, or their designees. If any substantial amendment is made to the petition, 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 in accordance with subsection (1) of this section prior to submittal to the secretary of state as provided in subsection (4) of this section.

The Title Board lacks jurisdiction to set a title if proponents make amendments to an initiative that are not in direct response to comments provided by the Legislative Offices, or if proponents make substantial amendments to the language and fail to resubmit it to the Legislative Offices before submitting it to the Title Board. *In re Title, Ballot Title & Submission Clause for 2007-2008 #57,* 185 P.3d 142, 147-48 (Colo. 2008).

Proponents do not contest the Petitioners' preservation of the arguments enumerated above, though they defer to the Petitioners to specify the precise location(s) in the record where each issue they wish to address here was raised and addressed before the Title Board.

**B. The Proponents Made Changes to Initiative #310 That Did Not Substantially Alter the Proposed Initiative and Were Only in Response to the Comments of the Legislative Offices.**

In the Review and Comment memo and during the Review and Comment hearing for Proposed Initiative #310, the Legislative Offices alerted the Proponents that by placing the Proposed Initiative in section 11 of Colo. Const., XVIII, it might violate Article 1, Section 10 of the U.S. Constitution prohibiting any "ex post facto Law, or Law impairing the Obligation of Contracts." Review and Comment Memo, pp. 2-3 ¶¶ 4(a) and (b); citing *Cummings v. Missouri*, 71 U.S. 277, 307-308 (1866); https://leg.colorado.gov/initiative_files/3534/download.

In response to this comment in the Review and Comment memo and the discussion in the Review and Comment hearing, the Proponents amended the Proposed Initiative to eliminate the ex post facto concern and make the measure apply only prospectively. *Record*, p. 9. Also, during the Review and Comment hearing, the Proponents discussed with the Legislative Offices that due to the concerns raised in the Review and Comment memo, the Proposed Initiative no

longer worked as an amendment to Colo. Const., art. II, § 11 (the ex post facto amendment), and needed to be moved to a different section of the constitution. *See Audio of Review and Comment Hearing for #310;* https://sg001-Harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20260402/-1/18483, at 10:06:38 - 10:08:30; and Review and Comment Memo, pp. 2-3 ¶¶ 4(a) and (b) at https://leg.colorado.gov/initiative_files/3534/download.

These recommendations from, and discussions with, the Legislative Offices were the only impetus for Proponents to move the Proposed Initiative from section 11 of article II of the Colorado Constitution, to section 17 of article XVIII of the Colorado Constitution, and to amend the language to ensure the initiative applied only prospectively. Additionally, these changes to the language and location of the amendment, in direct response to comments and discussion at the Review and Comment hearing, are not the type of substantial change that might otherwise require resubmission to the Legislative Offices. *In re 2007-2008 #57,* 185 P.3d at 147-48.

### C. The *Town of Idaho Springs* Case Is Distinguishable.

Petitioners rely upon *In re Proposed Initiated Constitutional Amendment Concerning Ltd. Gaming in the Town of Idaho Springs,* 830 P.2d 963 (Colo. 1992), to contend that the Title Board lacked jurisdiction to set a title because the

Proponents made substantial changes to the language of the Proposed Initiative that were not responsive to supports their position. But that case is readily distinguishable. In *Town of Idaho Springs*, the proponents of an initiative advocated limited gaming in the city of Idaho Springs in their initial ballot initiative submission. Their final submission to the Secretary of State for a hearing before the Title Board, however, contained new language "to grant regulatory entities authority to approve all forms of casino games and a minimum maximum wager limit of five dollars in places other than the city of Idaho Springs." 830 P.2d at 968. This new language was added in response to comments by the Legislative Offices, and the proponents never suggested at the public meeting (now called a Review and Comment meeting) that the initiative would grant limited gaming in places other than the city of Idaho Springs. 830 P.2d at 967-68. This Court held that the change from a proposal intended to establish constitutionally authorized regulatory provisions for limited gaming only in the city of Idaho Springs, to a proposal intended to establish such regulatory provisions for limited gaming in places other than that city was a "substantial alteration of the intent and meaning of a central feature of the initial proposal [that] in effect creates a new proposal that must be submitted to the legislative offices for comment at a public meeting." *Id.* at 968.

Here, in contrast, the change from an ex post facto application to a forward-looking application and the change in location in the Colorado Constitution from the ex post facto section of the Bill of Rights to the miscellaneous section is entirely responsive to the comments from, and discussions with, the Legislative Offices. https://sg001-Harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20260402/-1/18483, 10:06:38 - 10:08:30. *See In re 2007-2008 #57,* 185 P.3d at 148 (Amendments made in direct response to comments provided by the Legislative Offices are not required to be resubmitted.)

Accordingly, the Title Board had jurisdiction to set the title for the Proposed Initiative.

## II. The Title Set by the Title Board Is Not Misleading.

### A. Standard of review and preservation.

"The Title Board's duty in setting a title is to summarize the central features of a proposed initiative." *In re Title, Ballot Title, & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 24. The Title Board is "afforded discretion in resolving interrelated problems of length, complexity, and clarity in designating a title and ballot title and submission clause." *In re Title, Ballot Title, & Submission Clause for 2015-2016 #73*, 2016 CO 24, ¶ 23. 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." *Id*. Nor must a title recite every detail of the proposed measure. *In re Title, Ballot Title, & Submission Clause for 2001-2002 #21 & #22*, 44 P.3d 213, 222 (Colo. 2002). The Court will reverse the title set by the Board "only if a title is insufficient, unfair, or misleading." *Id.* ¶ 8. The Court does not "consider whether the Title Board set the best possible title." *In re Title, Ballot Title, & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 17.

Respondents agree that Petitioners preserved their challenge to the title set by the Board.

**B. <u>The Title Properly Informs Voters of the Key Features of the Proposed Initiative</u>.**

Petitioners do not specify in their *Petition* how the title is flawed, but in their *Motion for Rehearing*, Petitioners argued that the title is misleading because it "(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 "joint and several liability." *Record,* pp. 3-4.

The Title Board considered Petitioner's concerns in these regards but rejected the request to make changes to the title on these grounds. *Record*, p. 8.

First, laws are presumed to have a prospective effect unless a contrary intent is expressed in the language. *See Riley v. People*, 828 P.2d 254, 257 (Colo. 1992). The Title Board considered Petitioners' argument to amend the title to clarify that the measure only applies to conduct or contracts entered into after the effective date during the rehearing on April 23, 2026, and determined that it was not necessary to include in the title. *Record*, p. 8. Titles are intended to be a "relatively brief and plain statement by the Board setting forth the central features of the initiative for the voters," rather than "an item-by-item paraphrase of the proposed constitutional amendment or statutory provision." *In re Title, Ballot Title and Submission Clause for 1997-1998 # 62*, 961 P.2d 1077, 1083 (Colo. 1998).

Second, the Title Board determined that "successors in interest" is a legal term of art with which most voters will be unfamiliar. The Title Board opted to use "subsequent owners" as plain language to describe the measure in a way that most voters will understand. The Title Board determined that using these words in the title would lead to further voter understanding, and give voters useful information to determine whether to vote yes or no on the measure.

Third, the Title Board determined that most voters will be familiar with the phrase "jointly and severally liable" and there was not a succinct way to describe those terms in plain language. The Title Board further reasoned that voters would

have the Blue Book to assist them in understanding the full scope of the Proposed Initiative. "A perfect title is not necessary, but the Title Board must, in the process of setting a title, consider the public confusion that might be caused by misleading titles, avoid titles for which the general understanding of the effect of a 'yes/for' or 'no/against' vote will be unclear, and correctly and fairly express the true intent and meaning of the initiative in the title. *In re Title, Ballot Title and Submission Clause for 2015-2016 #156*, 2016 CO 56, ¶ 10 (internal citations omitted).

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. "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). 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.")

## CONCLUSION

The Proponents respectfully request the Court to uphold the actions of the Title Board regarding Proposed Initiative 2025-2026 #310.

Respectfully submitted this 8th day of May, 2026.

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **OPENING BRIEF OF RESPONDENTS SIDRA AGHABABIAN AND JESSICA ARHONTOULIS IN SUPPORT OF PROPOSED INITIATIVE 2025-2026 #310** was electronically served via e-mail or via the Colorado Courts E-Filing System on the 8th day of May, 2026 to the following:

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