

SUPREME COURT
STATE OF COLORADO

2 East 14th Avenue
Denver, CO 80203

Original Proceeding Pursuant to
§ 1-40-107(2), C.R.S. (2024)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative
2025-2026 # 311

Petitioners: Lynn Granger and Carly West

v.

Respondents: Sidra Aghababian and
Jessica Arhontoulis,

And

Title Board: Theresa Conley, Christy
Chase, and Kurt Morrison.

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Case No. 2026SA154

THE TITLE BOARD'S OPENING BRIEF

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, I certify that:

The brief complies with the word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 3,190 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).

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/ Lane Towery

Signature of attorney or party

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

1) Whether the Title Board lacked jurisdiction to set a title for Initiative #311 because the measure impermissibly contains multiple subjects that are not necessarily or properly connected.

2) Whether the Title Board lacked jurisdiction to set a title for Initiative #311 because the measure is so vague, confusing, and unclear as to its enforcement mechanisms that it cannot be understood.

3) Whether the Title Board erred by adopting a title for Initiative #311 that misleads voters and fails to accurately describe the measure.

STATEMENT OF THE CASE AND FACTS

Initiative #311 proposes imposing joint and several liability on oil and gas operators and waste injectors that cause damage to underground sources of drinking water. *See* Record, p 13. The Title Board set title, and Petitioners, two Colorado electors, seek review of the Title Board's decision on several grounds.

I. Title language requirements.

The Colorado constitution requires all initiatives to contain “one subject, which shall be clearly expressed in its title.” Colo. Const. art. V, § 1(5.5); *see also* C.R.S., § 1-40-106.5 (“[E]very constitutional amendment or law proposed by initiative” must be “limited to a single subject, which shall be clearly expressed in its title.”).

Because of these dual requirements, this Court’s review is “limited to two narrow inquiries.” *In re Title, Ballot Title, & Submission Clause for 2013-2014 #89*, 2014 CO 66, ¶ 9. First, the Court analyzes the plain language of the initiative to determine whether it comports with the requirement that the proposal only contain a single subject. *Id.* (citation omitted). Second, the Court analyzes the title set by the board to determine if it is clear. *Id.* (citation omitted).

II. Initiative #311

As Petitioners describe it, Initiative #311 would impose joint and several liability on oil and gas operators and waste injectors for damage to underground drinking water sources. Pet. for Review at 2. New

subsection 34-60-135.5, C.R.S would be titled “Protect our Underground Sources of Drinking Water Act” and proposes that:

Any oil and gas operator or waste injector that generates or injects exploration and production waste resulting in damage to an underground source of drinking water shall be held jointly and severally liable for all costs associated with: (a) remediation of the underground source of drinking water to restore it to its pre-damage condition; and (b) compensation for any economic, environmental, or health-related harm caused by the damage.

Record at 13.

At a hearing on April 15, 2026, the Title Board set the title:

A change to the Colorado Revised Statutes holding oil and gas operators and waste injectors jointly and severally liable for damage to underground drinking water sources caused by the generation or injection of exploration and production waste, and, in connection therewith, holding operators and waste injectors liable for all costs to restore the drinking water source and for economic, environmental, or health-related harm caused by the damage.

Record at 10.

On a motion for rehearing, Petitioners raised three issues: (1) that the measure contained multiple subjects, (2) that the Title Board lacked jurisdiction to set title because the measure was so vague, confusing, and unclear that it could not be understood, and (3) that the title as set

was unclear because it did not accurately describe the measure and would mislead voters. Record at 2–8.

At a hearing on April 23, 2026, the Title Board denied the motion for rehearing. Record at 11. The Board considered certain changes to the language of the title based on the Motion for Rehearing, but ultimately determined the changes made the title less clear, not more. *See Hearing Before Title Board on Proposed Initiative 2025-2026 #311* (Apr. 23, 2026) at 1:11:20–1:18:12, <https://tinyurl.com/4e42ej36>.

Petitioners raise the same three arguments here that were raised on the Motion for Rehearing. *See Pet. for Review* at 4–5

SUMMARY OF THE ARGUMENT

Initiative #311 self-evidently contains a single subject related to imposing joint and several liability on oil and gas operators responsible for harm to underground drinking water. The title set by the Title Board follows the language of the initiative nearly identically, and thus is a fair, accurate, and clear representation of the initiative. This Court should affirm the Title Board.

ARGUMENT

I. Proposed Initiative #311 contains a single subject.

A. Standard of review and preservation.

In the Court’s “limited review” of the Title Board’s actions, it examines a measure’s “wording” to “determine whether it and its title comport with the constitutional single subject and clear title requirements.” *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 14. The Court overturns the Title Board’s finding that an initiative contains a single subject “[o]nly in a clear case.” *In re Title, Ballot Title, & Submission Clause for Proposed Initiative 2025-2026 #158*, 2026 CO 13, ¶ 13 (citing *In re Title, Ballot Title & Submission Clause for 2015-2016 #132*, 2016 CO 55, ¶ 10)).

An initiative satisfies the single subject requirement when it tends to effect or carry out one general objective or purpose. *In re Title, Ballot Title & Submission Clause for Proposed Initiative 2025-2026 #158*, 2026 CO 13, ¶ 18 (citing *In re Title, Ballot Title & Submission Clause for 2015–2016 #132*, 2016 CO 55, ¶ 15). Even an “initiative proposing a comprehensive framework” contains a single subject if all of its provisions “relate directly to its single subject.” *In re Title, Ballot*

Title, & Submission Clause for 2013-2014 #89, 2014 CO 66, ¶ 15
(quoting *In re Title, Ballot Title, & Submission Clause for 2009–2010
No. 91*, 235 P.3d 1071, 1076 (Colo. 2010)).

Conversely, an initiative violates the single subject requirement when it “relates to more than one subject and has at least two distinct and separate purposes.” *In re 2025-2026 # 158*, ¶ 19 (quoting *In re 2015–2016 #132*, ¶ 16). It does not matter if the initiative’s purposes relate to the same general concept or subject, or if its provisions can be grouped under an overarching theme; an initiative that is susceptible to log rolling or that risks misleading voters will not satisfy the single subject requirement. *Id.* (citing *In re 2015–2016 #132*, ¶ 16).

The single subject requirement serves two functions. First, it “ensures that each proposal depends upon its own merits for passage” by preventing “log rolling” tactics: combining multiple subjects in hopes of attracting support from various faction with different or conflicting interests. *Id.* at ¶ 16 (cleaned up) (quoting *In re 2015–2016 #132*, ¶ 13); *see also* § 1-40-106.5(1)(e)(I) (explaining that the single subject requirement “forbid[s] the treatment of incongruous subjects in the

same measure . . . for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits”).

Second, the single subject requirement “prevent[s] surprise and fraud from being practiced upon voters.” § 1-40-106.5(1)(e)(II). It seeks to stop the “inadvertent passage of a surreptitious provision ‘coiled up in the folds’ of a complex initiative.” *In re 2025-2026 #158*, ¶ 17 (quoting *In re 2015-2016 #132*, ¶ 14).

The Title Board agrees this issue is preserved. *See Record*, pp 2–4.

B. The measure’s single subject is imposing joint and several liability for damage to an underground source of drinking water.

Initiative #311 would add a new subsection to Article 60 of Title 34, the “Energy and Carbon Management Act.” That Article creates a comprehensive regulatory scheme for oil and gas wells. Among other things, it establishes the Energy and Carbon Management Commission (“ECMC”), C.R.S. § 34-60-104.3, which may investigate and order penalties for violations of Article 60, § 34-60-121, and may bring suit to enforce those orders, § 34-60-109. In addition, any person “damaged by”

a violation of Article 60 may bring suit to recover damages. C.R.S. § 34-60-114.

Initiative #311 proposes a new subsection which makes any “oil and gas operator” or “waste injector” which causes “damage to an underground source of drinking water” “jointly and severally liable” for the costs of both “remediation” and “compensation for any economic, environmental, or health-related harm” caused. *See* Record at 13.

Initiative #311 explains that its purpose is to “ensure prompt, complete, and enforceable accountability for contamination of potable water supplies resulting from the disposal of exploration and production waste by imposing joint and several liability on (I) underground injection disposal companies and (II) the operators responsible for generating the exploration and production of waste.” Record at 12. Beyond its substantive section and the section stating its purpose, the measure includes a section defining “underground source of drinking water” and “waste injector”; and a section asserting the law applies only prospectively to conduct occurring after the effective date. *See* Record at 12–13. The covered entities could already be found liable for violations

of Article 60 under existing law. C.R.S. §§ 34-60-109 & -114. The initiative merely imposes joint and several liability where there are multiple at-fault parties which contribute to damage to an underground drinking water source.

On its face, Initiative #311 contains a single subject because all its provisions necessarily and properly relate to imposing joint and several liability on certain oil and gas companies for particular damages resulting from harm to underground drinking water sources. Each provision is dependent upon and connected to the others because they (1) state the purpose of the measure, (2) define key terms, (3) describe the change to the type of liability applicable to certain parties in certain circumstances, and (4) establish the prospective applicability of the act.

It “tends to effect or carry out one general objective or purpose.” There is no discernable “distinct and separate purpose” not “dependent upon or connected with” joint and several liability for damage to underground drinking water sources. In this, Initiative #311 is not unlike countless measures upheld for containing a single subject. *See, e.g., In re Title, Ballot Title, Submission Clause for 2011-2012 No. 45,*

2012 CO 26, ¶ 15 (holding constitutional initiative with six subsections was a single subject related to “public control of waters”); *In re Title, Ballot Title, & Submission Clause for 2013-2014 #89*, 2014 CO 66, ¶¶ 14–17 (holding constitutional initiative with multiple subsections contained single subject of “the creation of a public right to Colorado’s environment” despite broad public policy implications because a proposal “does not necessarily violate the single subject requirement just because it “makes policy choices that are not inevitably interconnected” (citations omitted)).

Further, Initiative #311 does not trigger either of the two “dangers” associated with multi-subject initiatives. It does not meld or log-roll multiple subjects together to earn support from various factions which might not support each part. *In re 2025-2026 # 158*, ¶ 18. Nor does it risk voter “surprise and fraud.” *Id.*, ¶ 17. The proposal’s text shows it contains no “surreptitious provision ‘coiled up in the folds’ of a complex initiative.” *Id.* Rather, the plain language unambiguously imposes joint and several liability on discrete actors for discrete harms.

Finally, Initiative #311 does not appear to “clandestinely” create a new “cause of action,” which Petitioners argued below. Record at 3. An individual’s right to sue—their cause of action—already exists in Article 60. *See* C.R.S. § 34-60-114. Imposing liability for “remediation” contemplates a type of injunctive relief, not a new cause of action. Nor does Initiative #311 have multiple subjects simply because joint and several liability covers damages (which are “backward-looking”) and injunctive relief (which is “forward-looking”). Record at 3. Both forms of liability are merely distinct applications of the single subject, the imposition of joint and several liability. *Cf. In re Title , Ballot Title & Submission Clause for 2021-2022 #16*, 2021 CO 55, ¶ 29 (“Although multiple ideas might well be parsed from even the simplest proposal by applying ever more exacting levels of analytic abstraction, implementation details that are directly tied to the initiative’s central focus do not constitute a separate subject.”).

II. The Title Board had jurisdiction because the measure contains a single subject.

A. Standard of review and preservation.

In its “limited review” of the Title Board’s actions, this Court examines an initiative’s “wording” to “determine whether it comports with the constitutional single subject requirement.” *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 8. In conducting this limited inquiry, the Court does not “address the merits of the proposed initiative,” but looks to its text and employs the general rules of statutory construction and gives words and phrases their plain and ordinary meanings. *Id.* The Court overturns the Title Board’s finding that an initiative contains a single subject “[o]nly in a clear case.” *In re 2025-2026 #158*, ¶ 13 (citation omitted).

The Title Board agrees this issue is preserved. *See Record*, pp 4–6.

B. Whether the initiative is unclear does not go to the jurisdiction of the Title Board.

Petitioners assert the Title Board “lacked jurisdiction to set a title for Initiative #311 because the measure is so vague, confusing, and unclear as to its enforcement mechanisms that it cannot be understood.” Pet. for Review at 4. In their Motion for Rehearing below,

Petitioners argued that “if an initiative is so vague, confusing, or unclear that its true purpose cannot be understood, then the Title Board lacks jurisdiction to set a title.” Record at 4. Petitioners cited no authority for that proposition. The Title Board is aware of no authority standing for that proposition and Petitioners’ question presented fails to raise a cognizable error for review.

Ordinarily, courts hold the Title Board lacks jurisdiction to set a title only where a proposed initiative fails the single-subject requirement. *E.g.*, *In re Title, Ballot Title & Submission Clause for Proposed Initiative 2001-02 No. 43*, 46 P.3d 438, 449 (Colo. 2002) (affirming Title Board’s determination that it lacked jurisdiction to set title because the proposed initiative contained more than one subject). The “clear title” requirement is not usually imposed on the initiative itself as a threshold jurisdictional matter. Instead, statute and the constitution impose the clarity requirement on the title set by the Title Board, not on the initiative. *See* C.R.S., § 1-40-106.5 (“which shall be clearly expressed *in its title*”) (emphasis added); Colo. Const. art. V, § 1(5.5) (same).

This Court has previously made this distinction clear by explaining that its review is “limited to two narrow inquiries.” *In re 2013-2014 #89*, ¶ 9. First, the Court analyzes the plain language of *the initiative* to determine whether it comports with the requirement that the proposal only contain a single subject. *Id.* (citation omitted). Second, the Court analyzes *the title* set by the board to determine if it is clear. *Id.* The standard of review, too, reflects the understanding that only the single-subject requirement bears on the Title Board’s jurisdiction. *In re 2025-2026 #158*, ¶ 13 (“Only in a clear case will we overturn the Title Board's finding that an initiative contains a single subject.”) (citation omitted).

Unless Petitioners could in some way point to the initiative’s failure to state a single subject, then they have failed to show the Title Board lacked jurisdiction. But Petitioners cannot make that showing because, for all the reasons described above in Section I, Initiative #311 clearly expresses a single subject.

III. The title is clear.

A. Standard of review and preservation.

In determining whether a title is clear, the Court “ensure[s] that the title fairly reflects the proposed initiative such that voters will not be misled into supporting or opposing the initiative because of the words that the Title Board employed.” *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 17. In other words, the title should “unambiguously state the principle” of the initiative. § 1-40-106(3)(b). At bottom, the Court will reverse the title set by the Board “only if a title is insufficient, unfair, or misleading.” *In re Title, Ballot Title & Submission Clause for 2015-2016 #156*, 2016 CO 56, ¶ 8; *In re Title, Ballot Title & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 8.

“The Title Board is vested with considerable discretion in setting the title[.]” *In re 2015-2016 #156*, ¶ 8 (citation omitted). That includes “discretion in resolving interrelated problems of length, complexity, and clarity in setting a title and ballot title and submission clause.” *In re 2013-2014 #90*, ¶ 24. Given this discretion, the Court “employ[s] all

legitimate presumptions in favor of the propriety of the Title Board's actions." *In re 2015-2016 #156*, ¶ 8 (citation omitted). And the Court does not "consider whether the Title Board set the best possible title." *In re 2019-2020 #3*, ¶ 17. Finally, in conducting its "limited inquiry," the Court employs the general rules of statutory construction and gives words and phrases their plain and ordinary meanings. *In re 2019-2020 #3*, ¶ 14.

The Title Board agrees this issue is preserved. *See* Record, pp 6–8.

B. The title is fair, accurate, and not misleading.

The title as set by the Title Board for Initiative #311 is clear and accurate. It "unambiguously state[s] the principle" of the initiative. § 1-40-106(3)(b). In fact, the title takes the key words and phrases from the initiative nearly identically, only reordering them in somewhat more natural language. Compare the initiative to the title:

Initiative

Any oil and gas operator or waste injector that generates or injects exploration and production waste resulting in damage to an underground source of drinking water shall be held jointly and severally liable for all costs associated with: (a) remediation of the underground source of drinking water to

restore it to its pre-damage condition; and (b) compensation for any economic, environmental, or health-related harm caused by the damage.

Record at 13.

Title

A change to the Colorado Revised Statutes holding oil and gas operators and waste injectors jointly and severally liable for damage to underground drinking water sources caused by the generation or injection of exploration and production waste, and, in connection therewith, holding operators and waste injectors liable for all costs to restore the drinking water source and for economic, environmental, or health-related harm caused by the damage.

Record at 10.

For similar reasons, the title is not misleading or confusing. A title is not misleading if “the title read as a whole fairly and accurately” describes the initiative. *In re Title, Ballot Title & Submission Clause for 2009-2010 #45*, 234 P.3d 642, 649 n.3 (Colo. 2010). By its plain language, the title incorporates the important features of the initiative directly, and thus fairly and accurately.

On rehearing, Petitioners argued the title should be clarified in several regards, including by adding that the initiative has only prospective effect, that “restoration” means “to its pre-damage

condition,” and by substituting “joint and several liability” in favor of “collectively and individually responsible.” Record at 6–7. But these are minor disagreements that do not rise to the level of making the title “insufficient, unfair, or misleading.” *In re 2015-2016 #156*, ¶ 8.

This Court should conclude that the title is clear.

CONCLUSION

The Title Board asks this Court to affirm the title as set for Proposed Initiative 2025-2026 #311.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **THE TITLE BOARD’S OPENING BRIEF** upon all counsel of record by Colorado Courts E-filing (CCE), this 8th day of May, 2025.

/s/ Dave Sluss