

<p>SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, Colorado 80203</p>	<p>DATE FILED May 8, 2026 5:12 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 2,937 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/ David B. Meschke

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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 #313 (the “Initiative” or “Initiative #313”).

ISSUES PRESENTED FOR REVIEW

- A. Whether the Title Board lacked jurisdiction to set a title for Initiative #313 because the measure’s applicability clause is incompatible with strict liability and thus the measure is so vague, confusing, and unclear that it cannot be understood.
- B. Whether the Title Board erred by adopting a title for Initiative #313 that misleads voters and fails to accurately describe the measure.

STATEMENT OF THE CASE

Initiative #313—which would impose strict liability on owners, operators, or producers for damages resulting from their oil and gas operations—is the last of four draconian retaliatory ballot measures filed by proponents associated with Conservation Colorado aimed at severely

impacting the oil and gas industry.¹ The four measures (Initiatives ##310–313) were 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 it perceives 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 #313, which Respondents submitted at the eleventh hour to make the final Title Board hearings for the 2026 ballot, is inherently unclear, vague, and confusing on its face. Although Initiative #313’s substantive provisions are similar to prior ballot measures that received

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>

titles in past years, it includes an applicability clause that the other measures did not. While the thrust of the measure would impose strict liability for damages from oil and gas operations regardless of fault or conduct, the measure's applicability clause provides that the measure would apply to "conduct" occurring after the measure's effective date. As a result, Initiative #313 vacillates between conveying a strict liability regime and proposing one based on the occurrence of unspecified conduct. These two concepts are entirely antithetical to each other and would confuse voters about what Initiative #313 proposes.

Moreover, the title of Initiative #313 fails to remedy this confusion. The title is ambiguous and lacks necessary explanatory language regarding what constitutes "conduct" for purposes of the applicability clause. These shortcomings result in a title that does not accurately reflect the content of the measure, to the detriment of the voters.

Respondents filed Initiative #313 with Legislative Council Staff on March 19, 2026, the day before the deadline for submitting 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 #313'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, the Title Board voted 3-0 that the Initiative contained a single subject and then set 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. For Initiative #313, the Title Board voted 3-0 to deny the motion.

Petitioners subsequently filed this appeal. They specifically request this Court hold that the Title Board does not have jurisdiction to set title for the Initiative because the measure is so vague and unclear as to not be understood by Colorado voters. 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 Initiative #313's lack of internal coherence and consistency, resulting in an incomprehensible initiative, deprived the Title Board of jurisdiction; and (2) whether Initiative #313's title fails to clearly reflect the contents of the measure. Both issues should prevent Initiative #313 from moving forward.

As to the first issue, the Title Board lacked jurisdiction to set title for Initiative #313 because the measure's inherent conflict renders it so vague, confusing, and unclear that it cannot be understood. Initiative #313 would impose strict liability on oil and gas owners, operators, and producers for damages resulting from their operations. The Initiative also includes an applicability clause limiting the measure's application to conduct occurring on or after the effective date of the measure. Strict liability, however, imposes liability regardless of the underlying conduct so long as it causes harm and damages. Given this limitation, it is unclear how and when strict liability is imposed under the measure, and thus, the Title Board lacked jurisdiction to set title.

As to the second issue, Initiative #313's title as currently constructed does not correctly and fairly express the true intent and meaning of the measure, in contravention of Colorado law. Specifically, the title (a) does not make clear that the measure applies only to conduct occurring on or after the effective date of the measure; (b) improperly includes the language "without regard to fault, negligence, or intent,"—a colloquial phrase defining strict liability not included in the measure itself; and (c) leaves ambiguous what types of conduct triggers strict liability under 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 #313. 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). 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 proponents of an initiative bear the ultimate responsibility for formulating a clear and understandable proposal for the voters to consider.” *Id.* 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 lacked jurisdiction to set title on Initiative #313 because the addition of the applicability clause made the measure vague, unclear, and confusing.**

The Title Board lacked jurisdiction to set title on Initiative #313 because the measure is, on its face, unclear and confusing. The Colorado Constitution mandates that an initiative's single subject "shall be clearly expressed in its title." *In re 2015-2016 #73*, 369 P.3d at 568. The clear title standard requires that the title "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." *Id.* The Title Board must consider the confusion that may arise from a misleading title and set titles that "correctly and fairly express the true intent and meaning" of a measure. *Id.* (quoting C.R.S. § 1-40-106(3)(b)). Based on these principles, if an initiative is so vague, confusing, or unclear that its true purpose cannot be understood, the Title Board lacks jurisdiction to

set a title. The Title Board has declined to set a title on this ground in the past, and it should have similarly refrained from doing so here.²

The purpose of Initiative #313, as reflected in the Review & Comment Memorandum, is “to require an operator, owner, or producer to be held strictly liable for any damages, including personal injury, property damage, and environmental harm, resulting from oil and gas operations.” (Review & Comment Hearing (April 2, 2026), <https://tinyurl.com/38jxc3xa>.) The amended measure, as submitted to the Title Board, added an applicability clause limiting the measure’s effect to “conduct occurring on or after the effective date of the measure.” (See Initiative #313 Pet. for Review at 9.)

The purpose of the measure and the applicability clause are inherently incongruous. “Conduct” is commonly defined as “the act, manner, or process of carrying on.”³ “Strict liability,” on the other hand,

² Petitioners preserved this argument in their motion for rehearing, (Initiative #313 Pet. for Review, Ex. 1 at 2–3), and at the rehearing (Title Board Rehearing (April 23, 2026), <https://csos.granicus.com/player/clip/570>).

³ *Conduct*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/conduct>.

is defined as “liability based on causation alone, without any other limiting factors,” or “liability without fault.”⁴ Thus, unlike negligence, a strict liability construct is not targeted at conduct. Instead, in attributing liability, it focuses only on the *origin* of the damage. Tying applicability to the term “conduct” is therefore inherently opposed to the concept of strict liability absent additional explanatory language.

For example, under the federal Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), an operator or owner of a property is strictly liable for any contamination on the property regardless of when the contamination occurred. *See* 42 U.S.C. § 9607. The liability is tied directly to the fact that the contamination *occurred*, not the *conduct* that caused the contamination. This liability extends to any historical owner of the property in the chain of title. For Initiative #313, however, it is unclear whether the measure encompasses the same scope of liability.

The lack of clarity regarding the scope of liability imposed by Initiative #313 will lead to voter confusion. In particular, various

⁴ *Liability*, BLACK’S LAW DICTIONARY (12th ed. 2024).

questions immediately arise regarding the scope of the Initiative. Does “conduct” apply to “damages” or to “oil and gas operations”? Or to both? And how does one determine the source of the contamination or damages to assign liability? At many oil and gas sites, it will be unclear exactly when pollutants or contamination originated or what events caused them. Where does Initiative #313 draw the line? Voters cannot assess whether to vote for the measure without answers to these questions.

Moreover, depending on the answers to the questions posed above, Initiative #313 could be retroactive and/or implicate prior owners. If retrospective, then the measure implicates the same constitutional issues identified in the Review & Comment Memorandum. *See* COLO. CONST. art. II, § 11. There, Legislative Council and the Office of Legislative Legal Services explained that the Colorado Constitution prohibits ex post facto laws, or those with retroactive effect. COLO. CONST. art. II, § 11. Recognizing that the measure as originally drafted would violate this prohibition, Respondents amended the measure to include the applicability clause. But the addition of the applicability clause raises

more questions than answers, and does not eliminate the possibility that Initiative #313 has a retroactive effect, as described above.

Therefore, the significant uncertainty caused by the addition of the applicability clause to Initiative #313 deprived the Title Board of jurisdiction to set title on Initiative #313. *See In re 2015-2016 #73*, 369 P.3d at 568.

II. **The title is inaccurate and misleading.**

Even if this Court were to affirm that it has jurisdiction to set a title, the title set for Initiative #313 violates the clear title requirement.

The title set for Initiative #313 is as follows:

A change to the Colorado Revised Statutes holding any oil and gas operator, owner, or producer strictly liable for any damages, including personal injury, property damage, or environmental harm, resulting from their oil and gas operations without regard to fault, negligence, or intent.

(Initiative #313 Pet. for Review, Ex. 1 at 7.)

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 a "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)). Here, Initiative #313’s title is inaccurate and misleading for at least three reasons.⁵ See *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.”).

First, depending on the answers to the questions posed above, (*see supra* Section I), the title must make clear whether the measure does or does not apply retroactively. The addition of the applicability clause leads to inherent confusion regarding the scope of the strict liability imposed

⁵ Petitioners preserved this argument in their motion for rehearing, (Initiative #313 Pet. for Review, Ex. 1 at 3–4), and at the Title Board rehearing (Title Board Rehearing (April 23, 2026), <https://csos.granicus.com/player/clip/570>).

by Initiative #313. While the language appears to impose liability only on “conduct” occurring on or after the effective date of the measure, what is meant by “conduct”?

Instead of providing this necessary clarity to voters, the title is completely silent. Based on the title’s plain language, voters may understandably assume that operators, owners, or producers can be held strictly liable for *past* operations. But the measure may apply only to “conduct” occurring after the effective date of the measure. The distinction in the text of the measure between past and future conduct is not clear from Initiative #313’s title. For example, the addition of the following language (if accurate) would make the effect of the measure clearer and reduce voter confusion: “. . . resulting from their ***current and future*** oil and gas operations”

The omission of this aspect of the measure is significant. As described above, strict liability in the related CERCLA context is meaningfully different because it includes any *historical* operations that may have impacted the environment. However, Initiative #313 may not

apply to historical operations. Thus, the title must make this distinction clear so that voters understand the true scope of the measure.

Second, and relatedly, the title is also inadequate because it leaves ambiguous what types of events trigger strict liability under the measure. *See supra* Section I. The title for Initiative #313 refers to harm “resulting from their oil and gas operations” but the measure’s text specifies that the measure would apply only to “conduct occurring on or after the effective date of this measure.” Does this mean an operator who discovers pollution or contamination after the effective date, but which originated from prior operations before its ownership, is not liable under the measure? Or what if environmental harm manifests after the effective date but stems from “conduct” occurring before the effective date? The title’s reference only to “operations” and its failure to address what “conduct” means results in a misleading and unclear title.

Third, the placement of “without regard to fault, negligence, or intent” in the title will lead to voter confusion, especially considering that most voters likely do not understand the precise nature of the legal term “strict liability.” The title is unclear whether “without regard to fault,

negligence, or intent” refers to strict liability or articulates a standard different from strict liability. Indeed, the measure’s text expressly defines strict liability as “liability without regard to fault, negligence, or intent.” If this language is included in the title, it should make clear that it *defines* strict liability, and does not reference an entirely different liability standard. Voter confusion could be reduced by simply moving “without regard to fault, negligence, or intent” higher in the title, as follows: “A change to the Colorado Revised Statutes holding any oil and gas operator, owner, or producer strictly liable, ***without regard to fault, negligence, or intent***, for any damages, including personal injury, property damage, or environmental harm, resulting from their oil and gas operations ~~without regard to fault, negligence, or intent.~~”

Without these changes, Initiative #313’s title is incomplete and misleading, and must be amended to express the measure’s true intent and meaning.

CONCLUSION

Petitioners respectfully request that the Court reverse the Title Board’s denial of Petitioners’ Motion for Rehearing and hold that the

Title Board lacks jurisdiction to set title for Initiative #313 because the measure is so vague, confusing, and unclear that it cannot be understood. For this reason, the Court should vacate the Title Board's decision and remand the measure to the Respondents. 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 requirement, 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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