SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203	DATE FILED May 15, 2026 4:24 PM
Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2025-2026 #283 ("Repeal Constitutional Right To Abortion") **Petitioner:** Karen Middleton, **v.** **Respondents:** Angela Eicher and Faye Barnhart, **and** **Title Board:** Michael Dohr, Kathleen Wallace, Jennifer Sullivan	**▲COURT USE ONLY▲**
Attorneys for Petitioner: Mark G. Grueskin, #14621 Nathan Bruggeman, #39621 Recht Kornfeld, P.C. 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-573-1900 (telephone) 303-446-9400 (facsimile) mark@rklawpc.com; nate@rklawpc.com;	Case Number: 2026SA158
PETITIONER'S ANSWER BRIEF	

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 C.A.R. 28(g).

It contains 2329 words.

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.

/s Nathan Bruggeman
Nathan Bruggeman
Attorney for Petitioner

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Petitioner Karen Middleton by and through counsel, Recht Kornfeld, P.C., respectfully submits her Answer Brief, and states:

LEGAL ARGUMENT

I. The titles set by the Board are incomplete and misleading.

A. Explaining the full scope of the Proposed Initiative would not be inaccurate—and the existence of the statutory protection for abortion doesn't make it so.

The Title Board contends that, at the rehearing, Petitioner "recognized … that adding a clause to the constitutional Initiative that would affirmatively allow denying, impeding, or discriminating against abortion would not be accurate given the statutory right codifying those protections." (Title Bd.'s Br. at 3 (citing to hearing).) To the extent the Board argues that Petitioner agreed that amending the titles to clearly describe the removal of the constitutional protection against government "deny[ing], imped[ing], or discriminat[ing]" against the right to abortion would be "[in]accurate," it is that characterization that is inaccurate.

The following is the exchange that occurred between the Board member for the Office of Legislative Legal Services ("OLLS") and counsel:

> **OLLS**: But doesn't section 25-6-404 also statutorily provide that same right, and so there's not actually going to be a change if the measure is successful.

> **Counsel**: That is a statutory level of protection that is subject to the General Assembly doing what it will. So it is not the same level of right or protection that exists by having it in the Constitution and which applies statewide and binds all levels of government. So it provides a different level of protection.
>
> **OLLS**: But the title you would be requesting is allowing a state or local government to deny, impede, or discriminate etcetera, and that wouldn't actually be accurate because the statute would still be in place, which does prohibit a public entity from denying, restricting, interfere with or discriminate.
>
> **Counsel**: I take your point, Mr. Dohr, it may be the word "allow" that we've proposed in the title is what we'd need potentially to tweak, but I think we still need to describe the scope of the constitutional right that's being removed.

(Apr. 24, 2026, Title Bd. Hr'g at 3:05 to 4:21.) Counsel did no more than acknowledge the OLLS representative's position that a word in the proposed revisions to the titles ("allowing" (*see* CF p. 3 (proposing title revision))), "may be" or "potentially" could be "tweak[ed]." Counsel was clear that, even if that word might change, the overall point remained: the titles need to "describe the scope of the constitutional right that's being removed."

And while the Board and Proponents may prefer a different word than "allowing"—the Board certainly could have selected a different word had it amended the titles—it is not "inaccurate" to say that, if the constitutional provision is repealed, the repeal would "allow" the right to be denied, impeded, or

discriminated against. (*See also* Proponents' Br. at 6-7 (arguing that the proposed language in the motion for rehearing would be inaccurate because of the statutory protection).) As explained during the rehearing, once the protection is removed from the Constitution, nothing prevents the General Assembly from repealing (or lessening) the statutory protection, or, indeed, passing prohibitory legislation. "Absent constitutional concerns, the General Assembly may amend or repeal prior legislation as the result of the adoption of policies that differ from those previously embraced by that governmental institution." *Colo. Water Conservation Bd. v. Upper Gunnison River Water Conservancy Dist*., 109 P.3d 585, 591 (Colo. 2005); *see also Barber v. Ritter*, 196 P.3d 238, 254 (Colo. 2008) (legislature retains its "plenary power to amended or repeal … enabling statutes"). Thus, "[a]bsent" the constitutional restriction, the General Assembly will be unconstrained and is empowered, without contrary constitutional authority, to pass legislation that denies, impedes, or discriminates against the right to abortion because the constitutional prohibition will have been repealed. That later passed legislation would prevail over whatever exists in statute now.[1] *See* C.R.S. § 2-4-206.

[1] It is unclear what the Board means when it writes that Petitioner "seeks to allow discrimination of, restriction of, and/or denial of in the Initiative with her proposed

Whether or not the language proposed by Petitioner was the exact "right" language for the amended titles or could be "tweak[ed]," the point of the motion for rehearing, the rehearing, and this appeal is that the Board's titles are deficient for failing to adequately describe the constitutional provision that the Proposed Initiative seeks to repeal. Accurately describing the provision being repealed does not create "confusion" or "tension" with the statutory protection for abortion, (Title Bd.'s Br. at 12; *see also* Proponents' Br. at 7-8 (arguing that the proposed revisions to the titles are confusing)), as the titles can state that the repeal concerns the constitutional protection (as the single subject statement already says and the language proposed by Petitioner emphasized). Voters know what the Constitution is and that it differs from a statute.

B. The Board refuses to acknowledge the language of the constitutional provision the Initiative seeks to repeal.

The Board argues that Petitioner's clear title position is unavailing because the Proposed Initiative "only seeks to repeal the constitutionalized right to abortion in Amendment 79, COLO. CONST. art. II, § 32." (Title Bd.'s Br. at 10 (emphasis

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amended language." (Title Bd.'s Br. at 10.) A title does not change the law or authorize anything, and the titles set by the Board do not change the substance of a measure. Titles are only a description of a measure.

in original); *see also id.* at 11 ("the language Objector Middleton seeks to insert would broaden the scope of what Initiative 283 would seek to do, which is solely to repeal Amendment 79 and its enshrined constitutional right to abortion"). Similarly, the Board and Proponents argue that Petitioner's clear title argument is one of "effects" (what the Board describes as the "follow-on impacts" of repealing the constitutional provision) or Petitioner is simply disagreeing with the policy choice the measure proposes. (Title Bd.'s Br. at 4, 12-13; Proponents' Br. at 8-9.)

Inherent in these arguments is the contention that Petitioner asked the Board to put a gloss on what a repeal would mean, to somehow define the consequences of the repeal. But what neither the Board nor Proponents acknowledge or account for is that Petitioner's argument is grounded in the constitutional text at issue—Petitioner is not asking the Board to come up with a way to describe a consequence of repeal but instead asking that the titles describe what the constitutional text subject to the repeal says. Here is the constitutional language:

> The right to abortion is hereby recognized. ***Government shall not deny, impede, or discriminate against the exercise of that right***, including prohibiting health insurance coverage for abortion.

Colo. Const., art. II, sec. 32 (emphasis added). Put differently, Petitioner is not asking that the titles "broaden the scope of what Initiative 283 would seek to do" or

describe "follow-on impacts." She is asking that the titles accurately describe the terms of the constitutional provision that is being repealed, as the Title Board was obligated to do: "Ballot titles … shall ***unambiguously*** state the principle of the provision sought to be added, amended, or ***repealed***." C.R.S. § 1-40-106 (3)(b) (emphasis added). Petitioner asks that the titles "unambiguously state" the provision to be "repealed." And, as a review of the constitutional text reveals, the language at issue is not, as Proponents suggest, some small or collateral detail. (*See* Proponents' Br. at 5.) It is, instead, the core of the constitutional right.

If anything, the cases cited by the Board support Petitioner's position. In *In re Title, Ballot Title, and Submission Clause for 2011-2012 #45*, 2012 CO 26, the titles did not simply state that the measure concerned "public control of water." They also "summarize[d] how Initiative 45 will revise the state constitution in sufficiently plain language to allow voters to understand the purpose ***and substance of the proposal***." *Id.* at ¶ 24 (emphasis added). It was this summary of the "substance of the proposal" that permitted voters to intelligently decide whether to support or oppose the measure "even without familiarity with water law principles." *Id.* The titles here contain no summary of how the Proposed Initiative "will revise the state constitution" or the "substance" of the changes.

Similarly, the titles in *In re Title, Ballot Title, and Submission Clause for 2013-2014 No. 89*, 2014 CO 66, did not stop at telling voters that the measure concerned "a public right to Colorado's environment." They continued to "alert the voter to subsection (2)'s designation of state and local governments as trustees of the public's right, and to subsection (3)'s statement that where state and local laws conflict, the more restrictive law will govern." *Id.* at ¶ 25. The titles here provide no similar "alert" to voters.

And the Board in *In re Title, Ballot Title and Submission Clause for 2013-2014 #90*, 2014 CO 63, did not just put in the titles that the measure concerned "oil and gas development," but set fulsome titles that described the ambit of the measure:

> Shall there be an amendment to the Colorado constitution concerning local government regulation of oil and gas development, and, in connection therewith, increasing local government authority to prohibit or limit oil and gas development; authorizing local laws and regulations that are more restrictive and protective of a community's health, safety, welfare, and environment than state law; declaring that if state or local laws and regulations conflict the more restrictive law or regulation governs; and specifying that such local laws and regulations are not a taking of private property requiring compensation under the Colorado constitution?

Id. at Appendix. In the cases cited by the Board, the titles went beyond a high-level statement to actually inform voters of the substance of what they were being asked to approve. The titles set by the Board here do not do that.

For similar reasons, Proponents' argument that the titles are sufficient because the summarize the measure's central feature is wrong. (Proponents' Br. at 4-5.) As demonstrated in the cases above, titles must be more than a general statement of a measure and, instead, provide information so voters can make an "intelligent[]" decision. *In re Title, Ballot Title and Submission Clause for 2015-2016 #73*, 2016 CO 24, ¶ 34. A title is not, in other words, sufficient simply because it describes the overall thrust of an initiative—the titles must allow an informed decision. The titles here do not do that because the generic statement that it repeals the constitutional right to abortion tells voters nothing of what the right is that's being repealed.

C. Describing the scope of the right being repealed is not an impermissible "catch phrase."

Finally, Proponents contend that describing the scope of the right being repealed, in particular, as they put it, "any formulation that states the measure would allow discrimination," would violate the prohibition on catch phrases. (Proponents' Br. at 9-10.) The Board did not find that there would be a catch

phrase, and, while it takes no position on the argument, (Title Bd.'s Br. at 13), the Board offers that "phrase at issue likely does not implicate catch phrase concerns," (*id.* at 13-14 n.2 (analyzing catch phrase argument).)

For the reasons given by the Board, and consistent with the Court's precedent, there is no catch phrase concern. The word "discriminate" is in the constitutional text Proponents seek to repeal, and the use of that word would do no more than "merely describe the proposed initiative" such that it is "not [an] impermissible catch phrase[]." *In re Title, Ballot Title and Submission Clause for 2013-2014 #85*, 2014 CO 62, ¶ 31. Further, Proponents offered no evidence below, and cite none in their brief, that the use of the word "discriminate" would "appeal to emotion" or "promote prejudice in place of understanding what is really being proposed." *In re Title, Ballot Title and Submission Clause for 2009-2010 # 45*, 234 P.3d 642, 649 (Colo. 2010). Their "'bare assertion that political disagreement currently exists' regarding the challenged phrase" is insufficient to establish that describing the "discrimination" component of the right being repealed is a catch phrase. *See In re Title, Ballot Title and Submission Clause for 2009-2010 # 45*, 234 P.3d 642, 649 (Colo. 2010) (quoting *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # 227 and # 228*, 3 P.3d 1, 7 (Colo. 2000))

(explaining that a party must offer "evidence" to establish a catch phrase). In fact, the Court has ordered the Board to set titles using the word "discriminate" (indeed, to use the word twice) with nary a suggestion that it implicated a catch phrase concern. *See In re Title, Ballot Title, & Submission Clause 2007-2008 # 61*, 184 P.3d 747, 751-52 (Colo. 2008).

CONCLUSION

In setting titles for Amendment 79, which added the constitutional provision to be repealed by the Initiative, the Board determined that voters need to understand the scope of the constitutional right to abortion being added to the Constitution. And they set titles that informed voters of it:

> Shall there be a change to the Colorado constitution recognizing the right to abortion, and, in connection therewith, ***prohibiting the state and local governments from denying, impeding, or discriminating against the exercise of that right***, allowing abortion to be a covered service under health insurance plans for Colorado state and local government employees and for enrollees in state and local governmental insurance programs?

(Emphasis added.[2]) If voters needed to understand the scope of the prohibition being added to the Constitution to make an intelligent decision on Amendment 79

[2] The titles for Amendment 79 are available on the Secretary of State's website at https://tinyurl.com/mx3eu9cm.

then, logically, they need to know the scope of the prohibition being removed to make an intelligent decision on the Proposed Initiative. But the titles the Board set here do not do that. Accordingly, for the reasons given above and in Petitioner's opening brief, the Court should reverse and remand to the Board to set a clear title.

Respectfully submitted this 15th day of May, 2026.

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CERTIFICATE OF SERVICE

I, Leni Charles, hereby affirm that a true and accurate copy of the **PETITIONER'S ANSWER BRIEF** was sent electronically via Colorado Courts E-Filing this day, May 15, 2026, to the following:

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