

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	<p>DATE FILED May 8, 2026 3:20 PM</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2025-2026 #283 (“Repeal Constitutional Right To Abortion”)</p> <p><b>Petitioner:</b> Karen Middleton,</p> <p>v.</p> <p><b>Respondents:</b> Angela Eicher and Faye Barnhart,</p> <p><b>and</b></p> <p><b>Title Board:</b> Michael Dohr, Kathleen Wallace, Jennifer Sullivan</p>	<p><b>▲ COURT USE ONLY ▲</b></p>
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<p><b>PETITIONER’S OPENING BRIEF</b></p>	

## 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).

Choose one:

It contains 2,662 words.

It does not exceed 30 pages.

The brief complies with C.A.R. 28(k).

For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record, not to an entire document, where the issue was raised and ruled on.

For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent'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 and C.A.R. 32.

*/s Nathan Bruggeman*  
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## **INTRODUCTION**

The Colorado Constitution recognizes the right to abortion, and it specifically protects that right by prohibiting state and local governments from taking actions that “deny, impede, or discriminate against the exercise of that right.” Initiative 2025-2026 #283 (the “Proposed Initiative” or “Initiative”) seeks to repeal this provision. The Title Board’s titles, however, while stating that the constitutional provision is being repealed, fail to tell the voters the scope of the protection being repealed. The prohibition on governments— that they cannot “deny, impede, or discriminate against the exercise of that right”—is central to how the constitutional provision works, and voters need to know that in deciding whether to repeal it. As such, the titles fail the clear title standard, and this Court should direct the Board to set titles that properly inform voters, whether they are familiar with the subject or not, as to the question being put before them.

## **ISSUES PRESENTED**

1. Whether the Board violated the clear title requirement by failing to inform voters that the proposed repeal of the constitutional right to abortion removes the constitutional restriction prohibiting all levels of government in the state from denying, impeding, or discriminating against the exercise of that right?

## STATEMENT OF THE CASE

### A. Statement of Facts.

Angela Eicher and Faye Barnhart are the proponents (“Proponents”) for the Proposed Initiative. Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services on March 30, 2026. Thereafter, on March 31, 2026, Proponents submitted a final version of the Initiative to the Secretary of State for purposes of submission to the Title Board.

#### 1. The Initiative.

In 2024, Colorado voters approved Amendment 79 to the Colorado Constitution, which provides for a right to abortion and prohibits all levels of government in the state from denying, impeding, or discriminating against that right. The Amendment provides:

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.

The Proposed Initiative seeks to repeal Amendment 79. (CF p. 7.)

**B. Nature of the Case, Course of Proceedings, and Disposition Below.**

The Title Board heard the measure on April 15, 2026, at which time it set titles. The Board set the title and submission clause as follows:

Shall there be an amendment to the Colorado Constitution repealing the current constitutional right to abortion?

(CF p. 5.)

On April 22, 2026, Petitioner filed a motion for rehearing, alleging that the titles set by the Board are misleading and confusing as they do not fairly communicate the true intent and meaning of the measure. Petitioner explained that the titles failed to apprise voters of the full scope of the repeal that would be presented to them, as Amendment 79 does not simply recognize a right to abortion but affirmatively restricts all levels of government from taking actions that “deny, impede, or discriminate” against the right. (CF p. 3.) Indeed, the ballot titles for Amendment 79 provided a clear explanation of the scope of the amendment to the Constitution. The 2024 title and submission clause stated:

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?

*See* Leg. Council of the Colo. General Assembly, “2024 State Ballot Information Booklet,” Research Pub. No. 815, Sept. 11, 2024, at 63, *available at* <https://tinyurl.com/swu2vmwm>.

The Title Board heard the motion for rehearing on April 24, 2026. The Board, or at least some members of it, appeared to take the position that, because there is a statutory protection for abortion, it was unnecessary and/or inaccurate for the titles to inform voters that the Proposed Initiative would remove the constitutional prohibition on state and local governments from “deny[ing], impeded[ing], or discriminat[ing] against the exercise of that right.”

The Board denied Petitioner’s motion. (CF p. 6.)

### **C. Jurisdiction**

Petitioner is entitled to review before this Court pursuant to C.R.S. § 1-40-107(2). Petitioner timely filed her motion for rehearing with the Board. *See* C.R.S. § 1-40-107(1). She timely filed her petition for review seven days from the date of the hearing on the motion for rehearing. *See id.* § 1-40-107(2).

## **SUMMARY OF ARGUMENT**

The titles set by the Title Board do not comply with the clear title standard. Although informing voters that the right to abortion is being repealed, the titles

provide no information to voters as to the scope of the right. The titles are overly general and lack the necessary information to inform voters as to the effect of a “yes” or “no” vote. As such, they are deficient under the clear title standard.

## **LEGAL ARGUMENT**

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

#### **A. Standard of Review; Preservation.**

An initiative title must “fairly summarize the central points of a proposed measure.” *In re Title, Ballot Title & Submission Clause, & Summary for Petition on Campaign & Political Fin.*, 877 P.2d 311, 315 (Colo. 1994). Titles must be “fair, clear, accurate, and complete” but are not required to “set out every detail of the initiative.” *In re Title, Ballot Title & Submission Clause, & Summary for 2005-2006 # 73*, 135 P.3d 736, 740 (Colo. 2006).

Although this Court reviews titles set by the Board “with great deference,” it will reverse where “the titles are insufficient, unfair, or misleading.” *Id.* The Court will amend titles where they “contain a material and significant omission, misstatement, or misrepresentation.” *In re Title, Ballot Title and Submission Clause, and Summary for 1997-1998 #62*, 961 P.2d 1077, 1082 (Colo. 1998). A title fails the clear title standard where “the general understanding of the effect of a ‘yes/for’ or ‘no/against’ vote will be unclear.” C.R.S. § 1-40-106(3)(b).

In other words, the clear title requirement “prevent[s] voter confusion and ensure[s] that the title adequately expresses the initiative’s intended purpose.” *In re Title, Ballot Title & Submission Clause for 2015-2016 #156*, 2016 CO 56, ¶ 11. A clear title “allow[s] 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 and Submission Clause for 2015-2016 #73*, 2016 CO 24, ¶ 22.

Petitioner preserved her clear title arguments in the motion for rehearing and during the hearing on her motion. (CF pp. 2-3; Apr. 24, 2026, Title Bd. Hr’g at 01:19.<sup>1</sup>)

**B. The Board’s titles fail to inform voters of the scope of the right that the Proposed Initiative seeks to repeal.**

The constitutional provision at issue does not simply establish a “right to abortion,” as the titles set by the Board state. Instead, the Constitution gives meaning to the right by restricting specific types of governmental action. It provides that neither the state nor any local government may “deny, impede, or discriminate” against the right. Colo. Const., art. II, sec. 32.

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<sup>1</sup> The hearing recording is available at <https://tinyurl.com/8zd6fn8r>.

That this aspect of the constitutional amendment serves a critical and animating role in the amendment is reflected by the fact that the Title Board included it in the titles for Amendment 79: “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 ...*” (Emphasis added.) If voters needed to understand the scope of protection being added to the Constitution, then, logically, they need to understand what the scope of the protection is that they are being asked to remove from the Constitution. But the titles here do not provide that information to voters, as they state only that the Proposed Initiative seeks to “repeal[] the current constitutional right to abortion.” (CF p. 5.)

These titles do not fulfill the requirement of informing voters of “the effect of a ‘yes/for’ or ‘no/against’ vote.” C.R.S. § 1-40-106(3)(b). The titles assume that voters know what the constitutional right is (“the current constitutional right”) but nowhere acknowledge that the constitutional provision imposes specific substantive restrictions on state and local governments. Such an assumption is inappropriate in title setting, as the Board must ensure that a voter “whether or not

they are familiar with the subject matter of a particular proposal” can make an informed decision on “whether to support or oppose the proposal” based upon the titles. *2015-2016 #73*, 2016 CO 24, ¶ 22. Being as clear and informative as possible is particularly important when dealing with the highly charged issue of abortion. *See In re Title, Ballot Title & Submission Clause for Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 241-42 (Colo. 1990) (reversing titles). Just as voters needed to know the definition of abortion and the meaning of a “new standard” in considering a prior initiative, *see id.*, here they need to know the scope of the protections the constitutional provision gives against state and local governments infringements.

This Court has reversed the Title Board where, similar to this case, it has set titles that are “so general that it does not contain sufficient information to enable voters to determine intelligently whether to support or oppose the initiative.” *2015-2016 #73*, 2016 CO 24, ¶ 34. The Court found deficient titles that informed voters that a measure concerned recall and new recall procedures but did “not advise voters what those procedures are.” *Id.* ¶ 28; *see also In re Title, Ballot Title, Submission Clause, and Summary Adopted April 17, 1996*, 920 P.2d 798, 800 (Colo. 1994) (holding titles defective where they failed to inform voters of the

geographic scope of a program targeted by a measure, which could lead voters to “misperceive the scope of the proposed Initiative”).

By making it clear that this repeal includes the removal of the prohibitions on government denying, impeding, and discriminating against the exercise of this right, voters will understand just how far-reaching this measure truly is. And that thoroughness of understanding is central to a fair title which, after all, must “*unambiguously state the principle of the provision* sought *to be* added, amended, or *repealed.*” C.R.S. § 1-40-106(3)(b) (emphasis added). Certainly, given that a title was inadequate because it failed to list the types of judges who were subject to an initiative, *In re Title, Ballot Title & Submission Clause, and Summary for 1999-2000 #104*, 987 P.2d 249, 259 (Colo. 1999), these titles are legally deficient for failing to state the specific, text-based governmental incursions that will be permitted by this repeal of an existing right.

Similarly, this Court disapproved the Board’s titles where a proposed initiative sought to limit the constitutional protection of obscenity. *In re Title, Ballot Title, Submission Clause, and Summary by the Title Board Pertaining to a Proposed Initiative on “Obscenity,”* 877 P.2d 848 (Colo. 1994). Those titles made reference to an existing constitutional standard (“to the full extent permitted by the

first amendment to the U.S. constitution”). *Id.* at 849. But as the Court explained, this description, even though faithful to the text of the measure, was insufficient because voters would not know what that means. *Id.* at 850-51. The Court ordered the titles amended to explain the scope of the change sought by the measure:

<b>Original Title (<i>id.</i> at 849)</b>	<b>Court’s Amended Title (<i>id.</i> at 851)</b>
<p>AN AMENDMENT TO THE COLORADO CONSTITUTION STATING THAT THE STATE AND ANY CITY, TOWN, CITY AND COUNTY, OR COUNTY MAY CONTROL THE PROMOTION OF OBSCENITY TO THE FULL EXTENT PERMITTED BY THE FIRST AMENDMENT TO THE U.S. CONSTITUTION.</p>	<p>AN AMENDMENT TO THE COLORADO CONSTITUTION STATING THAT THE STATE AND ANY CITY, TOWN, CITY AND COUNTY, OR COUNTY MAY CONTROL THE PROMOTION OF OBSCENITY TO THE FULL EXTENT PERMITTED BY THE FIRST AMENDMENT TO THE U.S. CONSTITUTION, <u>AND THEREBY PREVENTING THE COLORADO COURTS FROM INTERPRETING THE RIGHT OF FREE EXPRESSION MORE BROADLY UNDER THE COLORADO CONSTITUTION THAN UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION IN THE AREA OF OBSCENITY.</u></p>

Of course, the measure here does not limit the constitutional right through a reference to other law. But the same fundamental problem is present: voters cannot

be presumed to know the scope of the right that is being changed. Hence, the Court there added the explanatory clause so voters would understand the nature of the change being presented to them—and it was an error by the Title Board here to decline to do the same with respect to the titles for the Proposed Initiative.

**C. The statutory provision addressing abortion did not render the requested title change “misleading.”**

The Board indicated that explaining the scope of the constitutional right that the Proposed Measure seeks to repeal would be misleading because there is a statute that addresses abortion rights. *See* C.R.S. §§ 25-6-401 *et seq.* (“Reproductive Health Equity Act”).

The flaw in the Board’s reasoning is that a statute is transient, as it is subject to alteration or repeal by the General Assembly. Put simply, the protections that exist in statute may be there today but gone following the next General Assembly session. As the General Assembly itself has expressly stated:

The general assembly finds and declares, pursuant to the constitution of the state of Colorado, ***that each general assembly is a separate entity, and the acts of one general assembly are not binding on future general assemblies.*** Accordingly, no legislation passed by one general assembly requiring an appropriation shall bind future general assemblies.

C.R.S. § 2-4-215(1) (emphasis added); *see also Hessick v. Moynihan*, 262 P. 907, 915 (Colo. 1927) (“The general rule is that one legislature cannot bind the hands of its successors...”).

Nor would a voter be misled or confused. The titles as they stand unambiguously refer to the *constitutional* protection for abortion. Indeed, the titles refer to both the *Constitution* and the “current *constitutional* right”:

Shall there be an amendment to the Colorado *Constitution* repealing the current *constitutional* right to abortion?

(CF p. 5 (emphasis added).) A voter will clearly understand that the question presented concerns constitutional protections not statutory matters. There was no request or suggestion by Petitioner to refer to the statute. To the contrary, the language requested by Petitioner, which would end the titles and be the last clause seen by voters, emphasized the question concerns the constitutional protection for the right: “... when the right to abortion is no longer recognized *in the state Constitution*.” (CF p. 2 (emphasis altered).)

A statute is not a substitute for the Constitution, and being clear about the nature of the *constitutional* right being repealed will not mislead voters.

## CONCLUSION

In 2002, this Court noted that the proliferation of ballot measures was increasingly challenging voters to understand the bevy of questions being put to them—making the clear title requirement all the more important. Since then, the proliferation has grown, and the Court’s observation remains fully, if not more so, applicable:

The initiative process in Colorado has proliferated, and accordingly, this court and the title board now deal with an increasing number of measures. More importantly, when the proposals acquire the requisite support to be placed on the ballot, the voters now deal with an increasing number of measures. Particularly in this climate, we conclude that the fixing of an understandable title is of great importance.

*In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002 # 21 and # 22 (“English Language Education”), 44 P.3d 213, 222 (Colo. 2002).*

The titles for the Proposed Initiative fall short of meeting the clear title standard by failing to inform voters of the substantive, critical features of the constitutional right being repealed. Petitioner respectfully requests that this Court reverse and remand to the Board with directions to set a clear title.

Respectfully submitted this 8th day of May, 2026.

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**CERTIFICATE OF SERVICE**

I, Erin Mohr, hereby affirm that a true and accurate copy of the **PETITIONER'S OPENING BRIEF** was sent electronically via Colorado Courts E-Filing this day, May 8, 2026, to the following:

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