

<p><b>SUPREME COURT, STATE OF COLORADO</b>  2 East 14<sup>th</sup> Avenue  Denver, CO 80203</p>	
<p>Original Proceeding Pursuant to C.R.S. § 1-40-102(2)  Appeal from the Ballot Title Board</p>	<p><u>DATE FILED</u>  May 15, 2026 9:08 PM</p>
<p>In the Matter of the Ballot Title of Proposed Initiative 2025-2026 #283</p> <p><b>KAREN MIDDLETON</b>  Petitioners,</p> <p>v.</p> <p><b>ANGELA EICHER and FAYE BARNHART</b></p> <p>and</p> <p><b>COLORADO BALLOT TITLE SETTING BOARD:</b> Michael Dohr, Theresa Conley, and Kurt Morrison  <b>Respondents.</b></p>	<p><b>▲ COURT USE ONLY ▲</b></p>
<p><i>Attorneys for Respondents:</i>  Scott E. Gessler (28944)  Geoffrey N. Blue (32684)  Gessler Blue LLC  7350 E. Progress Place, Suite 100  Greenwood Village, CO 80111  Tel. (720) 839-6637 or (303) 906-1050</p>	<p>Case Number: 2026SA158</p>
<p><b>RESPONDENTS' ANSWER BRIEF</b></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).**

**X** It contains 1,592 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).**

**X** 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.

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/Scott E. Gessler  
Scott E. Gessler

## TABLE OF CONTENTS

Certificate of Compliance.....	ii
Table of Authorities .....	iv
I. Summary of the Argument. ....	1
II. Argument. ....	1
A. The Petitioner agrees that the title is accurate, captures the central feature of the initiative, and does not result in any confusion. ....	1
B. The Petitioner wants the title to include more detail, but she urges a legal standard that departs from well-established law.....	2
C. The Petitioner continues to advocate for the flawed language presented to Title Board.....	5
III. Conclusion .....	8
Certificate of Service .....	8

## TABLE OF AUTHORITIES

Cases	Pages
<i>In re Proposed Ballot Initiative on Parental Rts.</i> 913 P.2d 1127, 1132 (Colo. 1996).....	3
<i>In re Title, Ballot Title &amp; Submission Clause, &amp; Summary for 1999-2000 #256</i> 12 P.3d 246, 257 (Colo. 2000).....	7
<i>In re Title, Ballot Title &amp; Submission Clause, &amp; Summary For 1999-2000 No. 255</i> 4 P.3d 485 (Colo. 2000) .....	3
<i>In re Title, Ballot Title &amp; Submission Clause for 2013-2014 #90</i> 2014 CO 63 .....	3
<i>In re Title, Ballot Title, &amp; Submission Clause for 2007-2008 #62</i> 184 P.3d 52, 60 (Colo. 2008).....	3
<i>In re Title, Ballot Title &amp; Submission Clause for 2019-2020 #3</i> 2019 CO 107 .....	1
<i>Matter of Title, Ballot Title &amp; Submission Clause for 2015-2016 #63</i> 2016 CO 34 .....	3
<i>Matter of Title, Ballot Title &amp; Submission Clause for 2015-2016 #63</i> 2016 CO 34 .....	4
<i>Matter of Title, Ballot Title &amp; Submission Clause, &amp; Summary Adopted Nov. 1, 1995,            By Title Bd. Pertaining to a Proposed Initiative on Trespass-Streams with Flowing Water</i> 910 P.2d 21 (Colo. 1996) .....	6
<i>Matter of Title, Ballot Title, Submission Clause, &amp; Summary by Title Bd. Pertaining to a            Proposed Initiative on Obscenity</i> 877 P.2d 848 (Colo. 1994) .....	4
<i>Matter of Title, Ballot Title &amp; Submission Clause, &amp; Summary for 1997-1998 No. 105</i> 961 P.2d 1092 (Colo. 1998) (Aug. 10, 1998) .....	7

**Statutes**

C.R.S. § 25-6-404(a)..... 6

**Constitutional Provisions**

Colo. Const. art. II, § 32 ..... 7

## I. SUMMARY OF ARGUMENT

The Petitioner does not dispute that the ballot title and submission clause is accurate and fair, that it does not result in confusion, and that it captures the central feature of the initiative. Rather, the Petitioner argues that the title and submission clause must be thorough and complete. This is not the legal standard. The title and submission clause need not capture every detail, and here it need not include every detail of the constitutional provision being repealed. As it stands, voters will fully understand the meaning of a yes or no vote.

The Petitioner continues to rely on the language presented to the Title Board, even though that language is plainly inaccurate and wrong under currently law. She nonetheless speculates that current statutory protections for abortion may someday change in the future, but that speculation does not make the current title and submission clause inaccurate or incomplete.

## II. ARGUMENT

### A. **The Petitioner agrees that the title is accurate, captures the central feature of the initiative, and does not result in any confusion.**

As noted in the *Opening Brief*, this Court will reverse the title set by the Board “only if a title is insufficient, unfair, or misleading.”<sup>1</sup> Here, the Petitioner admits that “[t]he titles as they stand unambiguously refer to the constitutional protection,”

---

<sup>1</sup> *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 8.

meaning that a voter will not “be misled or confused.”<sup>2</sup> And the Petitioner further admits that “[a] voter will clearly understand that the question presented concerns constitutional protections not statutory matters.”<sup>3</sup> Finally, the Petitioner has not claimed that the ballot title and submission clause is misleading or unfair.

**B. The Petitioner wants the title to include more detail, but she urges a legal standard that departs from well-established law.**

Instead, the Petitioner argues that the title and submission clause should contain more detail. She asks this Court to overturn the Title Board because, according to her, “[b]eing as clear and informative as possible is particularly important,” because abortion is a highly charged issue.<sup>4</sup> Accordingly, she claims that “thoroughness of understanding is central to a fair title,”<sup>5</sup> and she criticizes the title for “failing to state the specific, text-based governmental incursions.”<sup>6</sup>

But “being as clear and informative as possible” is not the applicable legal standard. “The Title Board’s duty in setting a title is to summarize the central features

---

<sup>2</sup> *Petitioner’s Opening Brief* at 12.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 8.

<sup>5</sup> *Id.*

<sup>6</sup> *Petitioner’s Opening Brief* at 9.

of a proposed initiative;”<sup>7</sup> it “is not required to set out every detail of an initiative.”<sup>8</sup> As this Court has repeatedly held, the “summary is not intended to fully educate people on all aspects of the proposed law, and it need not set out in detail every aspect of the initiative.”<sup>9</sup> Furthermore, “[i]t is not [the Court’s] function to rewrite the titles and summary to achieve the best possible statement of the proposed measure’s intent.”<sup>10</sup>

Here, the Petitioner asks the Court to rewrite the ballot title and submission clause to include every single possible detail of the constitutional amendment subject to repeal. This is improper. The ballot title and submission clause expresses the central feature of the measure—to repeal the constitutional right to abortion. It is simple and accurate, it is not misleading, and it contains adequate detail to appraise a voter of the meaning of a “yes” or “no” vote.

The Petitioner claims that the title and submission clause is “so general that it does not contain sufficient information to enable voters to determine intelligently

---

<sup>7</sup> *In re Title, Ballot Title & Submission Clause for 2013-2014* #90, ¶ 24.

<sup>8</sup> *In re Title, Ballot Title, & Submission Clause for 2007-2008* #62, 184 P.3d 52, 60 (Colo. 2008); see also *Matter of Title, Ballot Title & Submission Clause for 2015-2016* #63, 2016 CO 34, ¶ 23.

<sup>9</sup> *In re Proposed Ballot Initiative on Parental Rts.*, 913 P.2d 1127, 1132 (Colo. 1996).

<sup>10</sup> *In re Title, Ballot Title & Submission Clause, & Summary For 1999-2000 No. 255*, 4 P.3d 485, 496 (Colo. 2000).

whether to support or oppose the initiative.” But this is wrong. Anyone reading the title and submission clause understands that it repeals a constitutional right to abortion. Abortion is a well-known issue among the electorate, and a “repeal” of a “right to abortion” contains sufficient information to allow voters to make an intelligent decision. For this reason, the Court should properly “give[] deference to [the title board’s] exercise of [its] authority.”<sup>11</sup>

Finally, the Petitioner relies heavily on *Matter of Title, Ballot Title, Submission Clause, & Summary by Title Bd. Pertaining to a Proposed Initiative on Obscenity*, (“*Initiative on Obscenity*”)<sup>12</sup> in which she argues that because the court expanded the title in that case, the court should expand the title in this case. But that initiative and ballot title were fundamentally different than the ones at hand in this case.

First, in that case the title was misleading, because a “yes” vote appeared to represent an expansion of the right of free expression, but a “yes’ vote in reality would be a vote against the expansion of free expression principles in the area of obscenity, whereas a ‘no’ vote would be a vote in support of the possibility of broader protections under the Colorado Constitution.”<sup>13</sup> Second, both the proponents and the

---

<sup>11</sup> *Matter of Title, Ballot Title & Submission Clause for 2015-2016 #63*, 2016 CO 34, ¶ 23.

<sup>12</sup> *Matter of Title, Ballot Title, Submission Clause, & Summary by Title Bd. Pertaining to a Proposed Initiative on Obscenity*, 877 P.2d 848 (Colo. 1994).

<sup>13</sup> *Id.* at 851.

objectors agreed that additional information should be included in the submission; even the Coard agreed more information was needed, and it included additional information in the summary, but not the submission clause.<sup>14</sup>

Finally, the Court found that the title “would create confusion or ambiguity about the effect of [the] initiative, even though the submission clause repeated the language in the initiative itself.<sup>15</sup>

Here, the Petitioner readily admits that the title and submission clause for #283 do not contain ambiguity and do not create confusion. For the ballot title and submission clause, the meaning of a “yes” or “no” vote is clear. And unlike the *Initiative on Obscenity*, there is no consensus among litigants and the Title Board that additional information is needed to clarify the how the initiative would function.

**C. The Petitioner continues to advocate for the flawed language presented to Title Board.**

The Petitioner continues to advocate for the “language requested by Petitioner, which would end the titles and be the last clause seen by voters.”<sup>16</sup> As explained in the *Respondents’ Opening Brief*, the Title Board considered and properly rejected this language, because it that language is inaccurate and misleading. And the Petitioner

---

<sup>14</sup> *Id.* at 850.

<sup>15</sup> *Id.*

<sup>16</sup> *Petitioner’s Opening Brief* at 12.

continues to incorrectly state that the title and submission clause should contain “specific, text-based governmental incursions that will be permitted by this repeal of an existing right.<sup>17</sup> But the repeal of the constitutional right to abortion will *not* permit governmental incursions. Even after repeal, Colorado statute will continue to prohibit those potential “governmental incursions” that concern the Petitioner. Indeed, Colorado law will continue to contain a host of protections for abortion. For example, a public entity “shall” not:

deny, restrict, interfere with, or discriminate against an individual's fundamental right to use or refuse contraception or to continue a pregnancy and give birth or to have an abortion in the regulation or provision of benefits, facilities, services, or information.<sup>18</sup>

To be sure, the Petitioner worries that the statutory protections for abortion may be “transient,” because the legislature (or people, by initiative) may one day change Colorado law. But this Court has rejected arguments that a title should describe potential effects on other laws, because “such speculation is not required of the Board.”<sup>19</sup> Likewise, this Court found that “[t]he Board properly declined to

---

<sup>17</sup> *Petitioner's Opening Brief* at 9.

<sup>18</sup> C.R.S. § 25-6-404(a).

<sup>19</sup> *Matter of Title, Ballot Title & Submission Clause, & Summary Adopted Nov. 1, 1995, By Title Bd. Pertaining to a Proposed Initiative on Trespass-Streams with Flowing Water*, 910 P.2d 21, 27 (Colo. 1996).

speculate” on potential future financial obligations created by an initiative.”<sup>20</sup> And when reviewing a ballot title, this Court’s “function is not to speculate on the future effects the Initiative may have if it is adopted.”<sup>21</sup>

Here, the Petitioner goes one step further. Rather than speculate about the effects on current laws, the Petitioner asks this Court to speculate about what the law itself may be in the future—what a future General Assembly (or initiative) may or may not do with respect to the statutory protections for the right to an abortion. This speculation is irrelevant, because a future law cannot change the unalterable fact that passage of the measure will not, in any way, permit governmental or public entities to “deny, impede, or discriminate against the exercise” of the right to abortion.<sup>22</sup> Under any reading, Petitioner’s proposed language is inaccurate and misleading.

### **III. CONCLUSION**

For the reasons state above the Court should deny the Petitioners request and affirm the Title Board’s ballot title and submission clause for Proposed Initiative 2025-2026 #283.

---

<sup>20</sup> *Matter of Title, Ballot Title & Submission Clause, & Summary for 1997-1998 No. 105 (Payments by Conservation Dist. to Pub. Sch. Fund & Sch. Districts)*, 961 P.2d 1092, 1097 (Colo. 1998), *as modified on denial of reb’g* (Aug. 10, 1998).

<sup>21</sup> *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 #256*, 12 P.3d 246, 257 (Colo. 2000).

<sup>22</sup> Colo. Const. art. II, § 32.

Respectfully submitted this 15<sup>th</sup> day of May 2026,

GESSLER BLUE LLC

s/ Scott E. Gessler  
Scott E. Gessler

### **CERTIFICATE OF SERVICE**

I hereby certify that on May 15, 2026, I electronically filed the foregoing with the Clerk of the Court using the CCES system, which notified all parties and their counsel of record.

Mark G. Grueskin, Esq.  
Nathan Bruggeman, Esq.  
Recht Kornfeld, P.C.  
1600 Stout Street, Suite 1400  
Denver, CO 80202  
[mark@rklawpc.com](mailto:mark@rklawpc.com)  
[nate@rklawpc.com](mailto:nate@rklawpc.com)  
*Counsel for Petitioner*

Kyle Holter, Esq.  
Colorado Attorney General's Office  
Office of the Colorado Attorney General  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 6th Floor  
Denver, CO 80203  
[kyle.holter@coag.gov](mailto:kyle.holter@coag.gov)  
*Counsel for Title Board*

By: s/ Joanna Bila  
Joanna Bila, Paralegal