

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED May 8, 2026 12:36 PM</p>
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2025) 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>Petitioners: Karen Middleton, v.</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Respondent: Angela Eicher & Faye Barnhart, and Title Board: Michael Dohr, Kathleen Wallace, Jennifer Sullivan.</p>	<p>Case No. 2026SA158</p>
<p>PHILIP J. WEISER, Attorney General JOSEPH G. MICHAELS, 40403 Assistant Solicitor General* Ralph L. Carr Colorado Judicial Center 1300 Broadway Denver, CO 80203 Telephone: (720) 508-6460 E-Mail: joseph.michaels@coag.gov *Counsel of Record <i>Counsel for the Title Board</i></p>	
<p>THE TITLE BOARD’S OPENING BRIEF</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, 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 2,685 words.

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/ Joseph G. Michaels

Joseph G. Michaels, #40403
Assistant Solicitor General

TABLE OF CONTENTS

ISSUE ON REVIEW	1
STATEMENT OF THE CASE	1
SUMMARY OF THE ARGUMENT	4
ARGUMENT	5
I. The Title Board properly set clear title.....	5
A. Standard of review and preservation.	5
B. Initiative 283 does not violate clear title requirements.....	6
CONCLUSION	14

TABLE OF AUTHORITIES

PAGE(S)

CASES

<i>Dye v. Baker</i> , 354 P.2d 498 (Colo. 1960)	12
<i>Evans v. Romer</i> , 854 P.2d 1270 (Colo. 1993)	10
<i>In re Proposed Initiative Concerning “Auto. Ins. Coverage,”</i> 877 P.2d 853 (Colo. 1994)	13
<i>In re Proposed Initiative Concerning “State Pers. Sys.,”</i> 691 P.2d 1121 (Colo. 1984)	9
<i>In re Proposed Initiative on Parental Notification of Abortions for Minors</i> , 794 P.2d 238 (Colo. 1990)	12
<i>In re Pub. Rts. in Waters II</i> , 898 P.2d 1076 (Colo. 1995)	7
<i>In re Title, Ballot Title, Submission Clause & Summary for 1996-6</i> , 917 P.2d 1277 (Colo. 1996)	8
<i>In re Title, Ballot Title & Submission Clause & Summary for 1999-2000 #245(b), 245(c), 245(d) & 245(e)</i> , 1 P.3d 720 (Colo. 2000)	6
<i>In re Title, Ballot Title & Submission Clause & Summary for a Pet. on Sch. Fin.</i> , 875 P.2d 207 (Colo. 1994)	7, 11
<i>In re Title, Ballot Title & Submission Clause for 1997-1998 #75</i> , 960 P.2d 672 (Colo. 1998)	8, 11
<i>In re Title, Ballot Title, and Submission Clause for 2011-2012 #45</i> , 2012 CO 26.....	9

<i>In re Title, Ballot Title & Submission Clause for 2013-2014 #76,</i> 2014 CO 52.....	6, 8
<i>In re Title, Ballot Title & Submission Clause for 2013-2014 #85,</i> 2014 CO 62.....	13, 14
<i>In re Title, Ballot Title & Submission Clause for 2013-2014 #89,</i> 2014 CO 66.....	9, 14
<i>In re Title, Ballot Title & Submission Clause for 2013-2014 #90,</i> 2014 CO 63.....	5, 7, 9, 12, 14
<i>In re Title, Ballot Title & Submission Clause for 2019-2020 #3,</i> 2019 CO 57.....	7, 8
<i>In re Title, Ballot Title & Submission Clause for 2019-2020 #3,</i> 2019 CO 107.....	5, 13, 14
<i>In re Title, Ballot Title & Submission Clause for 2021-2022 #16,</i> 2021 CO 55.....	5

STATUTES

§ 1-40-106, C.R.S.	7
§ 1-40-106.5, C.R.S.	6
§ 25-6-404, C.R.S.	4, 11

CONSTITUTION

COLO. CONST. art. II, § 32.....	2, 10
COLO. CONST. art. V, § 1	6

OTHER AUTHORITIES

<i>Rehearing Before Title Board on Proposed Initiative 2025-2026 #283</i> (Apr. 24, 2026), bit.ly/4vXj59c	2, 3, 4, 6, 13
---	----------------

ISSUE ON REVIEW

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

The title for Proposed Initiative 2025-2026 #283 (“Initiative 283”) as designated and fixed by the Title Board states:

An amendment to the Colorado Constitution repealing the current constitutional right to abortion.

Record, p 5. The ballot title and submission clause was designated and fixed by the Title Board as follows:

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

Id. By a 3-0 vote, the Title Board set title in the initial hearing and, after Rehearing, affirmed 3-0. *See id.* at 5-6. The effect would result in a strike through of section 32 of article II of the Colorado Constitution.

See id. at 7.

Objector Karen Middleton filed a motion for rehearing, asserting that the ballot title was “misleading, unfair, and inaccurate.” *Id.* at 2.

The basis for her objection was that the language did not mirror the language used in first enacting the constitutional right to abortion in Amendment 79 in 2024, specifically that Initiative 283 did not address or contemplate the follow-on impacts in Amendment 79 concerning “prohibiting the state and local governments from denying, impeding, or discriminating against the exercise of that right” to abortion. *Id.* at 2-3 (partially quoting Amend. 79, COLO. CONST. art. II, § 32). Objector Middleton argued that Initiative 283 needed to let voters “know just how far-reaching this new measure is” in that voters were unlikely to understand that striking the constitutional right to abortion also would eliminate the constitutional prohibition on state and local government from denying, impeding, or discriminating against the exercise of the right to abortion. *Id.* at 3.

At the Rehearing, Objector Middleton conceded the proposal was “relatively straightforward” but alleged Initiative 283 did “not provide voters with sufficient information to understand the scope of” the repeal. *Rehearing Before Title Board on Proposed Initiative 2025-2026 #283* (Apr. 24, 2026), bit.ly/4vXj59c (“Rehearing”) at 01:35-01:53.

Objector Middleton asserted that the substantive scope of the constitutional amendment on abortion included the prohibition on government denying, impeding, or discriminating against the exercise of the right to abortion, but that Initiative 283 only would repeal the constitutional amendment without addressing the latter prohibition on impediment, which voters should know. *Id.* at 01:54-02:52. In colloquy with the Board, Objector Middleton recognized there was statutory prohibition in effect prohibiting denying, impeding, or discriminating against the exercise of the right to abortion, and 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. *Id.* at 03:00-04:20.

The Proponents responded that the Initiative was brief and would not allow such discrimination against the exercise of the right to abortion because it would not repeal the statute and the title captures the purpose of the Initiative. *Id.* at 04:37-05:30. The Proponents also noted that the proposed added language, to allow denying, impeding, or discriminating, was essentially catch phrase language. *Id.* at 05:30-

6:07, 08:20-08:24. Finally, the Proponents indicated it was incorrect, as the proposed Initiative would not allow for discrimination. *Id.* at 06:08-06:30. The Title Board denied the petition for rehearing, noting the existence of the statute safeguarding the right. *Id.* at 08:40-09:41.

SUMMARY OF THE ARGUMENT

The Title Board correctly set clear title for Initiative 283. The title is clear in that it conveys a single purpose—the repeal of Amendment 79, section 32 of article II of the Colorado Constitution. It is not misleading, and it fully and fairly expresses the intent of the proposed Initiative. Properly understood, Objector Middleton’s objection concerns the follow-on impacts of the Initiative, if passed, as well as a baseline disagreement with the policy it presents. Those, however, do not undermine the clear title. The follow-on impacts are sorted through the judicial process, while the policy disagreement is not a consideration for this Court but rather for voters at the ballot box. Further, given the existence of section 25-6-404, C.R.S., which codifies in statute protections against denying, restricting, interfering, or discriminating

against an individual’s right to abortion, setting title with a clause *allowing* for such acts would be confusing and incorrect.

ARGUMENT

I. The Title Board properly set clear title.

A. Standard of review and preservation.

When considering a challenge to a title, the Court does not “consider whether the Title Board set the best possible title.” *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 17. “The Title Board’s duty in setting a title is to summarize the central features of a proposed initiative.” *In re Title, Ballot Title & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 24. The Board “is given discretion in resolving interrelated problems of length, complexity, and clarity in setting a title and ballot title and submission clause.” *Id.* The Court will reverse the title set by the Board “only if a title is insufficient, unfair, or misleading.” *Id.* at ¶ 8. This Court overturns the Title Board’s finding “only in a clear case.” *In re Title, Ballot Title & Submission Clause for 2021-2022 #16*, 2021 CO 55, ¶ 9 (discussing single-subject requirement) (quotations omitted).

The Title “Board’s actions are presumptively valid[,] and this presumption precludes [the Supreme Court] from second-guessing every decision the Board makes in setting titles.” *In re Title, Ballot Title & Submission Clause & Summary for 1999-2000 #245(b), 245(c), 245(d) & 245(e)*, 1 P.3d 720, 723 (Colo. 2000); accord *In re Title, Ballot Title & Submission Clause for 2013-2014 #76*, 2014 CO 52, ¶ 8 (The Court gives great deference to the Board’s determination, “employ[ing] all legitimate presumptions in favor of the Title Board’s actions.”).

This issue is preserved. Record, pp 2-3; Rehearing at 01:35-09:40.

B. Initiative 283 does not violate clear title requirements.

Initiative 283’s single, clear purpose is to repeal Amendment 79’s constitutional right to abortion. Nothing about the repeal language is unclear.

“Section 1(5.5) of article V . . . require[s] that every constitutional amendment or law proposed by initiative . . . be limited to a single subject, which shall be clearly expressed in its title[.]” § 1-40-106.5(1)(a), C.R.S.; see COLO. CONST. art. V, § 1(5.5). The title must “correctly and fairly express the true intent and meaning” of the

initiative. § 1-40-106(3)(b), C.R.S. (requiring clear title, for the Title Board to “consider the public confusion that might be caused by misleading titles,” and to “avoid titles for which the general understanding of the effect of a ‘yes/for’ or no/against’ vote will be unclear”). This ensures “each proposal depends upon its own merits for passage.” *In re Pub. Rts. in Waters II*, 898 P.2d 1076, 1078 (Colo. 1995).

In conducting its limited review, this Court does “not address the merits of the proposed initiative” or “suggest how it might be applied if enacted.” *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 57, ¶ 8. Where an initiative “tends to . . . carry out one general objective” or central purpose, the “effects th[e] measure could have on Colorado . . . law if adopted by voters are irrelevant.” *In re 2013-2014 #90*, ¶¶ 11, 17 (discussing single-subject requirement) (quotations omitted). To set a proper title, the “Board need not consider and resolve potential or theoretical disputes or determine the meaning or application of the” measure. *In re Title, Ballot Title & Submission Clause & Summary for a Pet. on Sch. Fin.*, 875 P.2d 207, 210 (Colo. 1994). Indeed, any need for future judicial interpretation of a measure

therefore does not render the Board unable to set title. *See id.* Nor does this Court “determine the initiative’s efficacy, construction, or future application.” *In re 2013-2014 #76*, ¶ 8.

As a threshold matter, an initiative may properly propose as a single subject an explicit repeal of a provision. *See In re 2019-2020 #3*, 2019 CO 57, ¶ 1 (proposed initiative would “repeal section 20 of article X”). Further, even a potential need for future judicial interpretation of a measure does not render the Board unable to set a title. For instance, this Court has held that to the extent an initiative’s use of the term “nonexempt well” was unclear, the Board could still set a title even though the term’s “definition must await future legislative and judicial construction and interpretation.” *In re Title, Ballot Title & Submission Clause for 1997-1998 #75*, 960 P.2d 672, 673 (Colo. 1998); *see also In re Title, Ballot Title, Submission Clause & Summary for 1996-6*, 917 P.2d 1277, 1281 (Colo. 1996) (court “cannot speculate as to the effect th[e] Initiative may have on other constitutional provisions or statutes”).

In *In re Title, Ballot Title, and Submission Clause for 2011-2012 No. 45*, this Court found clear title where the initiative described the

proposal as an amendment to the state constitution concerning the public control of water, where the clear language in the title allowed voters to determine intelligently whether to support or oppose the initiative—even *without familiarity with water law*. 2012 CO 26, ¶¶ 21, 23-24. And in *In re Title, Ballot Title, and Submission Clause for 2013-2014 No. 89*, this Court recognized that titles “need not contain every feature of the proposed measure” and upheld the Title Board’s setting of title for an initiative that explained “the central purpose of the proposal”—the public’s right to the environment—without “includ[ing] every detail of the initiative.” 2014 CO 66, ¶ 25.

Finally, in *In re 2013-2014 No. 90*, this Court explained that a title’s broad reference to “oil and gas development” was “sufficient to describe the scope of the initiative” because it was not misleading and it fairly reflected the central purpose of the initiative. *Id.* at ¶ 36. So, too, with Initiative 283 here: the repeal on abortion sufficiently describes the scope and central purpose of the initiative. *See In re Proposed Initiative Concerning “State Pers. Sys.,”* 691 P.2d 1121, 1123 (Colo. 1984) (title clear where it “enable[s] the electorate, whether familiar or

unfamiliar with the subject matter” to understand what the proposed initiative would do).

Objector Middleton’s assertion, at core, is that *more* information needs to be added to the succinct, clear title Initiative 283 presents—information that would muddy the waters, scope, and meaning of Initiative 283. She makes this argument putatively to allow local governments to discriminate, deny, impede, restrict, or interfere with the right to get an abortion as consistent with repealing Amendment 79.¹ But Initiative 283 only seeks to repeal the constitutionalized right to abortion in Amendment 79, COLO. CONST. art. II, § 32. It does not seek to repeal any statutory protections to those seeking abortions.

Indeed, the Colorado law affirmatively codifies the protections Objector Middleton seeks to allow discrimination of, restriction of, and/or denial of in the Initiative with her proposed amended language.

¹ Such language may actually work to constitutionalize a right to discriminate. *But see Evans v. Romer*, 854 P.2d 1270, 1284-86 (Colo. 1993) (Colorado constitutional amendment designed to repeal existing statutes, regulations, ordinances, and policies and thus prohibit governmental entities from adopting such policies allows for discrimination and violated equal protection), *aff’d*, *Romer v. Evans*, 517 U.S. 620 (1996).

Specifically, section 25-6-404(1)(a), provides that no public entity can “[d]eny, restrict, interfere with, or discriminate against” a person right to either continue a pregnancy or to have an abortion. That alone means any added language to Initiative 283 would create significant confusion about what the Initiative would do.

Moreover, 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. The fact that future judicial construction or even additional legislation may be necessary to determine what it would mean should Initiative 283 pass and the constitutional right to abortion no longer exist vis-à-vis the statutory protections against discriminating, impeding, denying, or restricting access to abortion simply does not render the title unclear or the meaning of the initiative unknowable to voters. *Cf. In re 1997-1998 #75*, 960 P.2d at 673. Quite the contrary, the title specifically calls for only “repealing the current constitutional right to abortion,” which is clear, narrow, and properly conveys the purpose of Initiative 283. *See In re Pet. on Sch. Fin.*, 875 P.2d at 210 (Board must

summarize central features of initiated measure, not “consider and resolve potential or theoretical disputes”). There is little reason to broaden that narrow purpose to inject confusion about and tension with section 25-6-404. Indeed, the question is whether the proposed title “fairly and succinctly advise[s] the voters what is being submitted, so that in the haste of an election the voter will not be misled into voting for or against a proposition by reason of the words employed.” *In re Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 241 (Colo. 1990) (quoting *Dye v. Baker*, 354 P.2d 498, 500 (Colo. 1960)). Initiative 283 satisfies that requirement.

Ultimately, Objector Middleton’s concern arises out of disagreement with the effect Initiative 283 would have on Colorado law, including both fundamental concerns about the repeal itself as well as its follow-on impacts on prohibitions against restricting or discriminating or impeding abortions. Valid concerns, to be sure, but for different forums. As this Court has held, the “effects th[e] measure could have on Colorado . . . law if adopted by voters are irrelevant.” *In re 2013-2014 #90*, ¶ 17 (quotations omitted). And while Objector

Middleton may disagree with the policy choices embodied in Initiative #283, that is the very reason at the heart of the democratic process of presenting the Initiative to voters to make a decision, not a reason to prohibit it. Put simply, the title is sufficiently clear for voters to determine what “a ‘yes’ or ‘no’ vote will be” conveying. *See In re Proposed Initiative Concerning “Auto. Ins. Coverage”,* 877 P.2d 853, 855 (Colo. 1994).

Finally, the Title Board does not take a position regarding Petitioners’ concern that Objector Middleton’s proposed addition—to include the phrase “allowing the state and local governments to deny, impede, or discriminate” against the exercise of the right to abortion, Record, p 3—impermissibly reflects a catch phrase.² *See* Rehearing at

² The Title Board “must avoid using catch phrases when setting a title.” *In re Title, Ballot Title & Submission Clause for 2013-2014 #85*, 2014 CO 62, ¶ 31. But “[p]hrases that merely describe the proposed initiative are not impermissible catch phrases.” *Id.* And a phrase is not a catch phrase “when it contributes to a voter’s rational comprehension and does not promote impulsive choices based on false assumptions about the initiative’s purpose and its effects if enacted.” *In re 2019-2020 #3*, 2019 CO 107, ¶ 28 (quotations omitted). The phrase at issue likely does not implicate catch phrase concerns, given that the term (i) traces “directly from the text of the Proposed Initiative[, (ii)] its inclusion in

05:31-06:07. That question is unnecessary to reach the resolution here.

In short, Initiative 283 “clearly express[es] the single subject of the initiative.” *In re 2013-2014 #89*, ¶ 24. The Title Board acted within its considerable discretion when selecting words that accurately describe Initiative 283’s meaning and purpose. *See In re 2013-2014 #90*, ¶ 8.

CONCLUSION

The Title Board rightly determined Initiative 283 had a clear title. This Court should affirm.

the title provides an accurate description of what the Proposed Initiative[] would do,” *In re 2013-2014 #85*, ¶ 32, and (iii) “[t]he phrase is descriptive and informative based on the common understanding of the words used,” *In re 2019-2020 #3*, 2019 CO 107, ¶ 29. But because the added clause is not *necessary* to convey a clear title, and would in fact create a lack of clarity, the Title Board rightly rejected adding it irrespective of whether it was a catch phrase.

Respectfully submitted,

PHILIP J. WEISER
Attorney General

/s/ Joseph G. Michaels

JOSEPH G. MICHAELS, 40403*
Assistant Solicitor General
Public Officials Unit
State Services Section
Attorney for the Title Board
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S OPENING BRIEF** upon all counsel of record for the parties who have entered their appearances in this matter through the Colorado Courts E-Filing System this 8th day of May 2026.

/s/ Carmen Van Pelt
