SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203	DATE FILED May 7, 2026 3:19 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 #312 ("Cost of Natural Gas Pipeline Extensions") **Petitioner:** Edward Andrew Leighty, **v.** **Respondents:** Sidra Aghababian and Jessica Arhontoulis, **and** **Title Board:** Christy Chase, Theresa Conley, and Kurt Morrison	**▲COURT USE ONLY▲**
Attorneys for Petitioner: Thomas M. Rogers III, #28809 Nathan Bruggeman, #39621 Recht Kornfeld, P.C. 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-573-1900 (telephone) 303-446-9400 (facsimile) trey@rklawpc.com; nate@rklawpc.com;	Case Number: 2026SA148
PETITIONER'S OPENING 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).

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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.

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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
Nathan Bruggeman
Attorney for Petitioner

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INTRODUCTION

Initiative 2025-2026 #312 (the "Initiative" or "Proposed Initiative") impermissibly combines a new, substantive standard on utilities (a prohibition on raising rates on existing customers to pay the costs of extending a natural gas pipeline to serve new customers) with changes to the constitutional powers of the General Assembly, Public Utilities Commission, and municipalities that own utilities. This combination violates the prohibition on including multiple subjects in a single measure and is inconsistent with this Court's precedents. The Court should reverse the Title Board's decision to set titles for the measure.

In addition, the titles set for the Initiative fail to inform voters that the timing of applicability of the measure will vary widely, from immediate applicability in some instances to delayed applicability of years or decades in others. This omission renders the titles misleading. The Court should return the Proposed Initiative to the Title Board to set titles that correct this error.

ISSUES PRESENTED

1. Whether the Proposed Initiative violates the single subject requirement by surreptitiously altering the long-standing, separate constitutional authority of (a) the state government and (b) municipalities that own utilities to

regulate and approve utility rates under the guise of a billing restriction on utility companies?

2. Whether the Title Board erred in setting titles that are misleading and incomplete in that the titles fail to disclose to voters that the Proposed Initiative will apply at different times to different utility customers based upon the occurrence of vague and undefined triggering events?

STATEMENT OF THE CASE

A. Statement of Facts.

Sidra Aghababian and Jessica Arhontoulis ("Proponents") proposed the Initiative. Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services on April 2, 2026. Proponents submitted a final version of the Initiative to the Secretary of State for purposes of submission to the Title Board on April 2, 2026.

1. The Initiative.

The Initiative proposes an amendment to the Colorado Constitution that is intended to regulate the billing practice of utilities that supply natural gas by prohibiting such utilities from charging "current" customers for the cost of pipeline extensions (and eventual decommissioning of such pipelines) that serve "new" customers. The measure states:

> UTILITIES SHALL NOT RAISE UTILITY BILL RATES OF EXISTING CUSTOMERS TO PAY ANY COSTS OF A NATURAL GAS PIPELINE EXTENSION AND ITS EVENTUAL DECOMMISSIONING UNDERTAKEN TO SERVE NEW CUSTOMERS.

(CF p. 12.) The review and comment memorandum raised whether this prohibition would violate the Contracts Clause of the U.S. and Colorado Constitutions. The memorandum stated:

> Many of the distributors and utilities that the language of the proposed initiative would apply to likely already have existing contracts determining how costs are allocated. Article II, section 11 of the Colorado Constitution and article I, section 10 of the United States Constitution prohibit laws impairing the obligation of contracts. Because of these constitutional provisions, you may consider adding language to the proposed initiative clarifying that the proposed initiative applies to contracts entered into on or after the applicable effective date of the proposed initiative.

(Mem. from Leg. Council Staff and Office of Leg. Legal Servs., Mar. 27, 2026, at 3 *available at* https://tinyurl.com/f39um2yw). In response to this question, Proponents added an "applicability" clause to the Initiative, which provides:

> This measure applies to conduct occurring or contracts entered into on or after the effective date of this measure.

(CF p. 12.) The Initiative does not amend Article XXV of the Constitution, which addresses utility regulation, including rate regulation, but instead adds a new section to Article XVIII. (*See id.*)

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. (CF p. 10.) On April 22, 2026, Petitioner filed a motion for rehearing. With respect to single subject, Petitioner argued that the Initiative alters the constitutional authority of the Public Utilities Commission ("PUC"), which is subject to the General Assembly's legislative authority, to regulate utility rates ***and*** altered the constitutional authority of municipalities that operate utilities, which are subject to voter control, to set utility rates. With respect to clear title, Petitioner contended that the titles need to explain the "applicability" clause of the measure, which directly affects voters across the state and applies to voters at different times based on vague and undefined criteria. (CF pp. 6-9.)

The Title Board heard the motion for rehearing on April 23, 2026. As to the single subject argument, the representative of the Attorney General concluded that the Initiative violates the single subject requirement, explaining:

> Madam Chair, so I was persuaded by the motion. I had never read Article XXV of the Constitution before, but I didn't view it as removing authority from the PUC so much as constitutional amendments can do that. But Article XXV vests or accords "all power" to regulate rates and charges, and this amendment by its nature will not only change the charges and rates on its face [inaudible], but it would then make that Article XXV no longer accurate because the General Assembly would no longer have "all

> power" in this one field here. So it does change, in some ways limits the General Assembly's authority. It may not be much, I'm not even sure how much it would be, but that statement in Article XXV, I think, would no longer be accurate in terms of what authority the General Assembly has to vest rate-setting authority with the PUC or whatever agency it designates under the terms of Article XXV.

(Apr. 23, 2026, Title Bd. Hr'g ("Apr. 23 Hr'g") at 1:48:54 to 1:49:55.[1]) As the Title Board Chair then recognized, the Initiative would be working "a bigger structural change for General Assembly authority." (*Id.* at 1:50:02 to 1:50:06.) The Attorney General's representative confirmed that summation "succinctly makes my point." (*Id.* at 1:50:11 to 1:50:13.)

He further explained that the way Proponents structured their measure, adding a new provision to Section XVIII instead of amending Article XXV governing utility and rate regulation, created a "coiled in the folds" problem. (*Id.* at 1:51:59 to 1:52:12.) The Board Chair, although ultimately voting that there was a single subject, recognized that the placement triggered a "hidden in the folds" concern. (*Id.* at 1:54:55 to 1:55:03.)

The Board denied Petitioner's motion for rehearing 2-1. The Board set the following title and submission clause for the measure:

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[1] The hearing recording is available at https://tinyurl.com/2ujdumvc.

> Shall there be an amendment to the Colorado Constitution prohibiting utilities from raising utility bill rates of existing customers to pay for any costs associated with extending a natural gas pipeline to serve new customers or later removing or retiring the extended pipeline?

(CF p. 11.)

C. Jurisdiction

Petitioner is entitled to review before this Court pursuant to C.R.S. § 1-40-107(2). Petitioner timely filed his motion for rehearing with the Board. *Id.* § 1-40-107(1). He filed his petition for review with this Court seven days from the date of the hearing on the motion for rehearing. *Id.* § 1-40-107(2). Accordingly, this Court has jurisdiction over Petitioner's appeal.

SUMMARY OF ARGUMENT

The Proposed Initiative contains multiple subjects. *First*, it creates a new, substantive standard on utilities (a prohibition on raising rates on existing customers to pay the costs of extending a natural gas pipeline to serve new customers). *Second*, it changes the constitutional powers of the General Assembly, Public Utilities Commission, and municipalities that own utilities. The Court's precedents on multiple subjects have held in several instances that combining a new, substantive change with alterations in governmental authority violate the singe subject standard.

In addition, the titles set by the Board fails to inform voters that the timing of applicability of the measure will vary widely for consumers because the applicability clause turns "conduct occurring or contracts entered into" after adoption. While the applicability provision of the Initiative is vague and undefined, it appears to require differential treatment of municipalities, and thus consumers, based on the years remaining on their franchise agreements with utilities. This omission renders the titles misleading.

LEGAL ARGUMENT

I. Initiative 312 violates the constitutional single subject limitation by impermissibly combining in one measure a new substantive standard on utilities with alterations in the separate constitutional authority of the state and localities to regulate certain utilities.

A. Standard of Review; Preservation of Issue Below.

An initiative cannot contain "more than one subject." Colo. Const., art. V, sec. 1(5.5). Where a measure "contains more than one subject," "no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls." *Id*. An initiative satisfies the single subject requirement where its provisions are "necessarily and properly connected." *In re Titles, Ballot Titles, & Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, & #128*, 2022 CO 37, ¶ 13 (internal quotation marks and citation omitted). "In other words, a

measure violates the single subject requirement if its provisions are not 'dependent upon or connected with each other.'" *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 172, No. 173, No. 174, and No. 175*, 987 P.2d 243, 244 (Colo. 1999) (internal citation omitted).

The single subject requirement principally guards against two evils. First, it prevents so-called "logrolling," in which proponents combine "incongruous subjects in the same measure" "for the purpose of" creating a political coalition to support the measure that might not otherwise support the different elements of the measure. C.R.S. § 1-40-106.5(1)(e)(I). In other words, different subjects must be passed on their own merits. Second, it ensures that initiative proponents do not coil "surreptitious measures" together that would surprise voters—"that is, to prevent surprise and fraud from being practiced upon voters." *Id*. § 1-40-106.5(1)(e)(II). *See generally, e.g., In re Initiatives 2021-2022 #67, #115, & #128*, 2022 CO 37, ¶¶ 11-15 (reviewing single subject limitation); *In re Title, Ballot Title and Submission Clause, and Summary for Initiative 1999-2000 #25*, 974 P.2d 458, 460-65 (Colo. 1999) (reviewing history of single subject requirement).

This Court reviews the Title Board's actions with "deference," *see In re Title, Ballot Title and Submission Clause for 2015-2016 #73*, 2016 CO 24, ¶ 18,

and it "employs all legitimate presumptions in favor of the propriety of the Board's actions," *see In re Title, Ballot Title and Submission Clause for 2009-2010 # 91*, 235 P.3d 1071, 1076 (Colo. 2010).

Petitioner preserved this issue in his motion for rehearing and during the hearing. (CF pp. 6-8; Apr. 23 Hr'g at 1:26:40 to 1:30:00.)

B. The Constitution vests distinct regulatory authority over utilities in the General Assembly through the Public Utilities Commission and, separately, protects the independent regulatory authority of municipalities that elect to have a municipal utility.

The Constitution directly addresses utility regulation, including the regulation of rates and charges. On the one hand, it vests general authority in the PUC, subject to the authority of the General Assembly. It then creates a unique carveout from state authority for municipally owned utilities. The Constitution provides:

> In addition to the powers now vested in the General Assembly of the State of Colorado, ***all power to regulate the facilities, service and rates and charges therefor***, including facilities and service and rates and charges therefor within home rule cities and home rule towns, of every corporation, individual, or association of individuals, wheresoever situate or operating within the State of Colorado, whether within or without a home rule city or home rule town, as a public utility, as presently or as may hereafter be defined as a public utility by the laws of the State of Colorado, ***is hereby vested in such***

> ***agency of the State of Colorado as the General Assembly shall by law designate***.
>
> ***Until such time as the General Assembly may otherwise designate, said authority shall be vested in the Public Utilities Commission of the State of Colorado***; provided however, nothing herein shall affect the power of municipalities to exercise reasonable police and licensing powers, nor their power to grant franchises; and provided, further, ***that nothing herein shall be construed to apply to municipally owned utilities***.

Colo. Const., art. XXV (emphasis added). The PUC, therefore, is of constitutional origin, and, subject to the General Assembly, is vested with "all power" over public utility regulation, including as to "rates and charges." *Id.*; *Aspen Airways, Inc. v. Rocky Mountain Airways, Inc.*, 584 P.2d 629, 631 (Colo. 1978) ("Article XXV thereby granted to the PUC as much authority as the legislature possessed prior to 1954.").

As this Court has explained, this structure fulfills a consumer protection role: "The PUC's regulatory powers and duties are aimed primarily at the protection of consumers who have little or no choice in the selection of their provider because the utility enjoys monopoly status." *CF&I Steel, L.P. v. Pub. Utils. Comm'n*, 949 P.2d 577, 584 (Colo. 1997). The General Assembly has exercised its constitutional authority by directing the PUC "to adopt all necessary rates, charges, and regulations to govern and regulate all rates, charges, and tariffs

of every public utility of this state to correct abuses" and "to prevent unjust discriminations and extortions in the rates, charges, and tariffs of such public utilities of this state." C.R.S. § 40-3-102. The PUC approve rates, including for gas utilities, that are "just and reasonable." *Id.* § 40-3-101(1); *see also id.* § 40-3-111(1) (providing that PUC is to review proposed rates and charges and set just and reasonable rates). Public utilities are to "furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and the public, and as shall in all respects be adequate, efficient, just, and reasonable." *Id.* § 40-3-101(2).

These obligations require a "balancing of investor and consumer interests." *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 644 P.2d 933, 939 (Colo. 1982). The Court has described the balancing thus:

> The PUC must determine that every rate is "just and reasonable" and that services provided "promote the safety, health, comfort and convenience of its patrons, employees, and the public and shall in all respects be adequate, efficient, just and reasonable." The PUC must also consider the reasonableness and fairness of rates so far as the public utility is concerned. It must have adequate revenues for operating expenses and to cover the capital costs of doing business. The revenues must be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.

Id. (quoting *Pub. Utils. Comm'n v. Dist. Court*, 527 P.2d 233, 234-35 (Colo. 1974)); *see also CF&I Steel*, 949 P.2d at 584 ("Accordingly, the primary matters for PUC determination in the public interest are: (1) sufficiency of the rates to recompense the utility and maintain its operational viability for the purpose of serving the public; and (2) distribution of the revenue requirement between the various customer classes in a just and reasonable manner."). Thus, "the Commission's essential function is to ensure that all rate charges are fair and reasonable to ratepayers and the utility." *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 26 P.3d 1198, 1204 (Colo. 2001).

And, as a consumer protection principle, the Court has recognized that, absent "reasoned distinctions," "consumers within the same class of service should be subject to substantially similar rates." *CF&I Steel*, 949 P.2d at 584. The PUC discharges these duties and receives deference as it is an "experienced administrative body." *Pub. Utils. Comm'n. v. Nw. Water Corp.*, 451 P.2d 266, 275 (Colo. 1969) (quoting *Darnell v. Edwards*, 244 U.S. 564, 569 (1917)); *see also CF&I Steel*, 949 P.2d at 584 (describing the PUC as "an expert Commission").

But the PUC's authority over public utilities is not universal. The Constitution carves out an exception for municipally owned utilities: "nothing

herein shall be construed to apply to municipally owned utilities." Colo. Const., art. XXV. This exception reflects that voters in those municipalities can control the utility and seek recourse through the ballot box:

> The rationale of Article XXV and [*Denver v. Public Utilities Commission*, 507 P.2d 871 (Colo. 1973)], is that when a municipally owned utility operates within the municipality, there is no one who needs the protections of the PUC. The electorate of the City exercises ultimate power and control over the City-run utility and if the people of the City are in any way dissatisfied with the operation of the utility, they may demonstrate their discontents at the next municipal election.

K. C. Elec. Assoc. v. Pub. Utils. Comm'n, 550 P.2d 871, 873-74 (Colo. 1976); *see also City of Fort Morgan v. Pub. Utils. Comm'n*, 159 P.3d 87, 93 (Colo. 2007) (reviewing distribution of utility regulation under the Constitution, including that "municipally owned utilities operating within municipal boundaries[are exempt] from PUC regulation"). The Constitution thus distributes power to both the state government (general utility regulation) and to certain local governments (those with municipally owned utilities), with the latter exception resting upon local voters' fundamental right to vote and control their municipality.

C. Initiatives that mix substantive changes in legal standards with alterations in governmental authority violate the single subject standard.

This Court has held that initiatives that combine substantive new legal standards with alterations in government authority violate the single subject limitation.

For example, in *In re Title, Ballot Title and Submission Clause for 2009-2010 # 91*, the Court considered an initiative that established a new tax on "beverage containers" and a fund for use of the tax proceeds, with the bulk of funds directed to water preservation-related uses. 235 P.3d 1071, 1073, 1074-75 (Colo. 2010). Much of the funding went "to the nine basin roundtables and the interbasin compact committee." *Id.* at 1075. The measure also imposed a moratorium on the General Assembly from exercising its legislative authority over the basin roundtables and interbasin compact. This moratorium was intended to protect the funding and the substantive intent of the measure. *Id.* The Court held that the initiative violated the single subject requirement, as it created a new substantive measure (the beverage tax) and altered the General Assembly's legislative authority, a change in authority the Court explained was "coiled in the folds of this initiative." *Id.* at 1077. The Court explained that it had previously

"reversed the Title Board's action in setting titles for initiatives affecting substantial rearrangement of existing governmental powers." *Id.* at 1078.

With respect to the initiative, the Court continued that there was "no necessar[y] and proper[] connection[]" between the measure's "establishing and administering a beverage container tax" and its "divest[ing] the General Assembly of its legislative power" over administrative agencies. *Id.* at 1079, 1080. In addition to logrolling, the Court explained that the measure would surprise voters:

> Voters confronted with this lengthy ballot initiative championing a beverage container tax might be surprised to learn that the initiative, if adopted, would deprive the legislators they elect from exercising any authority over the basin roundtables and the interbasin compact committee for a substantial period of time, at least equal to the four-year term of senators they elect. Discovery of this second purpose is revealed only through a close reading of the initiative and an appreciation of its complex text and how its sections interrelate. Such subterfuge is precisely what the constitutional prohibition against multiple subjects was designed to prevent.

Id. at 1079. The Court was "especially trouble[ed]" by the initiative's limitation on the legislature considering "the oversight and authority the General Assembly traditionally has over agencies it has established." *Id.* at 1080.

The Court's analysis in *#91* exemplifies the concern, under a single subject analysis, of the pairing of a new substantive standard with "substantial rearrangements" of preexisting powers—but the case is hardly an outlier. The

Court has on other occasions held that such pairings violate the constitutional single subject standard. *See, e.g.*, *In re Title, Ballot, and Submission Clause for 2003-2004 # 32 & # 33 and Failure to set Title for 2003-2004 # 21 & # 22*, 76 P.3d 460, 462-63 (Colo. 2003) (disapproving initiative that sought to change procedural aspects of initiative and referendum process and made a substantive alteration in who could serve on the title board); *In re Title, Ballot Title and Submission Clause, and Summary for 1997-1998 # 64*, 960 P.2d 1192, 1198-99 (Colo. 1998) (holding that a measure addressing judicial qualifications had separate subjects including "reallocating governmental authority and control" over Denver county court judges and "divest[ing] the Commission of its investigatory and remedial powers").

D. Initiative #312 changes the substantive authority of state and local government, which change is hidden within the initiative.

Here, the Proposed Initiative tells voters that it is addressing the billing practices of "utilities," (CF p. 12), but what the measure is doing instead is changing the regulatory authority over rates for ***two*** levels of government: the state and municipalities with their own utilities.

With respect to the state, it changes the General Assembly's and PUC's constitutional authority over rate regulation in this area. No longer is the General Assembly through the PUC vested with "all power" over rates and charges. Colo.

Const., art. XXV. The Initiative then upends the statutory scheme around rate regulation, which creates protections for consumers through the requirement of "just and reasonable rates" and for utilities in the necessity of balancing a reasonable rate against the business realities of running a public business with a legal responsibility to serve customers. And lost is the expertise of the PUC in this area of rate setting.

This "substantial rearrangement" of preexisting powers is compounded by the measure's applicability to all "utilities," which, without alerting voters, repeals the constitutional exemption from state regulation for municipally owned utilities in this area of gas rates. The concern with this alteration in authorities is heightened because the exemption is rooted in voter control over municipalities. *See K. C. Electr. Assoc.*, 550 P.2d at 873-74. The loss of constitutional authority is not, ultimately, simply that of governmental authority, but, instead, it is an impairment of the right of voters in municipalities with utilities. That is a substantive change in the rights of municipal electors that "should be separately addressed by the voters." *2003-2004 # 32 & # 33*, 76 P.3d at 463.

Worse still is that voters will ***not*** know they are changing the regulatory authority of the state and municipalities. As candidly acknowledged by the

Attorney General's Board designee, he "had never read Article XXV of the Constitution" prior to Petitioner's motion for rehearing. Nor did it appear that the Board Chair was aware that the measure would affect governmental authorities in such a way until after the Attorney General's designee explained his concerns, at which point she acknowledged the Initiative creates "a bigger structural change for General Assembly authority." If experienced and knowledgeable persons such as two Board members did not understand the scope and reach of the measure, it is unlikely that voters will understand what they are being asked to approve.

That is one of the "flagrant evils" the single subject requirement is meant to prevent—the "passage of unknown and alien subjects, which might be coiled up in the folds of the bill." *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # 25*, 974 P.2d 458, 461 (Colo. 1999) (quoting *In re Breene*, 24 P. 3, 3-4 (Colo. 1890) (discussing single subject requirement for bills)). Indeed, the titles set by the Board tell them nothing of the change, (*see* CF p. 11), and, instead, baits them in with the suggestion of some (likely illusory) relief in utility bills.

Accordingly, the Board erred in finding it had jurisdiction to set titles for the Proposed Initiative, and the Court should reverse its determination.

II. 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 the 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).

This Court reviews titles set by the Board "with great deference" but will reverse where "the titles are insufficient, unfair, or misleading." *Id*. The Court will correct titles that "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).

Petitioner preserved his clear title arguments in the motion for rehearing and during the hearing on his motion. (CF pp. 8-9; Apr. 23 Hr'g at 1:30:00 to 1:31:32.)

B. The titles fail to inform voters that the Proposed Initiative's applicability clause will lead to differential treatment of gas utility rate payers based upon the occurrence of vague and undefined events.

Although applying to all utilities, the Proposed Initiative does not apply to all utility rate payers in the same fashion. Instead of making their measure generally applicable to rate payers, Proponents devised a set of contingent criteria to govern the application of the measure:

> This measure applies to conduct occurring or contracts entered into on or after the effective date of this measure.

(CF p. 12.) The titles say nothing about the applicability clause:

> Shall there be an amendment to the Colorado Constitution prohibiting utilities from raising utility bill rates of existing customers to pay for any costs associated with extending a natural gas pipeline to serve new customers or later removing or retiring the extended pipeline?

(CF p. 11.) The measure and the titles create two problems. *First*, it is entirely unclear what "conduct occurring or contracts entered into" means. *Second*, the titles' failure to address the applicability clause is (1) generally problematic as it is a central component of the measure and (2) emphatically problematic because the titles suggest some illusory cost savings to voters in an election year in which costs and affordability are a paramount voter concern.

The Title Board confronted the very real problem that it could not explain to voters what the applicability provision means. Utility rates are approved by public authorities such as the PUC, generally following a hearing process and a balancing of established criteria. *See* C.R.S. § 40-3-111(1). The measure, however, restricts certain gas rates by "utilities" based upon "conduct occurring" or "contracts entered into." The measure defines neither "conduct occurring" nor "contracts entered into." Given that the applicability clause bears no relation to the actual process of rate approval, it is unclear what in fact triggers the Initiative's proposed rate restriction. As these contingent triggers are central to the measure's operation, the Board had an obligation to describe the applicability clause in the titles. The facial vagueness of the Initiative prevented the Board from doing so, such that it should not have set titles. *See In re Title, Ballot Title and Submission Clause, and Summary for Initiative 1999-2000 #25*, 974 P.2d 458, 469 (Colo. 1999).

While the actual operation of the applicability clause is unclear, what is clear is that rate payers are supposed to be treated differently. Instead of the pipeline extension limitation applying to all rate payers beginning on January 1, 2027, the limitation kicks-in upon "conduct occurring" or "contracts [being] entered into."

For some rate payers, "conduct occurring" or "contracts [being] entered into" could happen in 2027. For others, those events may happen in outyears.

For example, if those contingencies are meant to be tied to municipal franchise agreements,[2] such agreements can have decades-long effective dates. This prohibition could kick in 2027 for Municipality A that enters a new franchise agreement just after the measure passes, but not until the mid-to-late 2030s or later for Municipality B that reauthorized a franchise just before voters pass the measure. This is not hypothetical. Avon, for example, has a franchise agreement with Xcel Energy with a term that runs from May 2024 to May 2044. (*See* Avon, Colo., Ordinance No. 24-14, August 27, 2024, at PDF p. 12 (franchise agreement p. 5), *available at* https://tinyurl.com/4hpapm72.) Louisville's franchise agreement with Xcel Energy, in contrast, expires in December 2027. (*See* Louisville, Colo., Ordinance No. 1527, Series 2007, & Franchise Agreement (at p. 4 of franchise agreement), *available at* https://tinyurl.com/2pc27dc8.) Assuming a franchise

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[2] Franchise agreements permit a utility to operate within a municipality over a defined period often with an associated fee. *See Montrose v. Pub. Utils. Comm'n*, 732 P.2d 1181, 1187 (Colo. 1987) (describing ability of municipalities to grant franchises); *see also*, *e.g.*, City and County of Denver, "City & County of Denver and Xcel Energy Partnership," last visited May 6, 2026, https://tinyurl.com/3fmkkn9z (describing Denver's franchise with Xcel Energy).

agreement triggers the Proposed Initiative, Avon will not be subject to the amendment for some 18 years, while it appears the prohibition would be triggered in Louisville as soon as next year.

This differential treatment of rate payers matters because affordability is a central issue in this year's election.[3] The titles imply utility rate payers may receive some protection from increases in utility rates without telling voters that many of them will not be eligible for the measure's protections for years if not ***decades***. Many voters may change their position on the Proposed Initiative upon learning that it offers no savings or rate protection for them. The absence of such critical

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[3] *See, e.g.*, N. Coltran, "In poll, Coloradans express growing economic fears—and dimming views of Polis, Bennet, and Hickenlooper," *The Denver Post*, Apr. 8, 2026 ("More than 90% considered the price of housing, health care, home and car insurance, food ***and utilities*** to be a problem." (emphasis added)), *available at* https://www.denverpost.com/2026/04/08/colorado-michael-bennet-phil-weiser-voter-poll/; B. Birkeland, "Colorado voters pessimistic about the economy and elected officials in new poll," *CPR*, Apr. 8, 2026 (polling identifies cost of living among highest issues voters want state government to address), *available at* https://www.cpr.org/2026/04/08/colorado-voters-pessimistic-new-poll/; *see also, e.g.*, W. Galston "GOP midterm prospects darken as Trump approval falls," *Brookings Institution*, Apr. 28, 2026 (polling indicates "inflation/prices" among top concerns), *available at* https://www.brookings.edu/articles/gop-midterm-prospects-darken-as-trump-approval-falls/; D. Montanaro & E. Moore, "Poll: Democrats have biggest advantage for control of Congress in 8 years," *NPR*, Nov. 19, 2025 ("Nearly 6-in-10 say Trump's top priority should be lowering prices"), *available at https://www.npr.org/2025/11/19/nx-s1-5611088/poll-democrats-republicans-trump-approval-inflation*.

information in the titles renders it one 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), if not being misleading.

CONCLUSION

Therefore, Petitioner respectfully requests that this Court hold that the Board lacked jurisdiction to set titles. Alternatively, the Court should return the Proposed Initiative to the Board to set titles that satisfy the clear title standard.

Respectfully submitted this 7th 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 7, 2026, to the following:

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