SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	DATE FILED May 15, 2026 3:34 PM
Original Proceeding Pursuant to C.R.S. § 1-40-107(2) Appeal from the Colorado Ballot Title Setting Board **Petitioners:** Lynn Granger and Carly West v. **Respondents:** Sidra Aghababian and Jessica Arhontoulis **Colorado Ballot Title Setting Board:** Theresa Conley, Christy Chase, and Kurt Morrison.	▲ **COURT USE ONLY**
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PETITIONERS' ANSWER BRIEF

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).

It contains 2,534 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).

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.

In response to each issue raised, the appellee must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant'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 or 28.1, and C.A.R. 32.

/s/Jason R. Dunn

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Petitioners Lynn Granger and Carly West, registered electors of the State of Colorado, through undersigned counsel, submit their Answer Brief in this original proceeding challenging the actions of Title Board on Proposed Initiative 2025-2026 #310 ("Initiative #310").

SUMMARY OF THE ARGUMENT

As described in Petitioners' Opening Brief, Initiative #310 is a retaliatory ballot measure filed by proponents associated with Conservation Colorado and directly targeted at the oil and gas industry. Respondents specifically proposed Initiative #310 to retroactively impose joint and several liability on prior and current oil and gas operators for damages resulting from their past and current operations. After constitutional concerns with this intent were raised during the review and comment process, Respondents substantially altered the measure from an exception to the constitutional ex post facto provision to a forward-looking measure that would impose joint and several liability on current and future oil and gas operators. Respondents made both substantial changes that transformed Initiative #310 into a new measure and changes unresponsive to review and comment, both of which require

resubmission. Making matters worse, the title set for Initiative #310 fails to adequately address the new nature of the measure and would mislead voters. (*See* Pet'rs' Opening Br. at 9, 18-22.)

Respondents' and the Title Board's Opening Brief deflect, arguing that some of Petitioners' arguments are not within the scope of this Court's review and that the deference this Court gives to the Title Board should be sufficient to defeat Petitioners' other arguments.

As to jurisdiction, neither Respondents nor Title Board contest that the post-review and comment changes to Initiative #310 were substantial. Instead, they simply argue that the changes were responsive to review and comment, and that substantial, responsive changes do not deprive the Title Board of jurisdiction. (*See* Resp'ts' Opening Br. at 6; Title Board's Opening Br. at 6–7.) Neither argument is on point.

As to Initiative #310's title, Respondents and Title Board largely sidestep Petitioners' substantive arguments, relying on the deference afforded Title Board. (*See* Resp'ts' Opening Br. at 9–12; Title Board's Opening Br. at 8–12.) But deference cannot excuse noncompliance with the clear title requirement, especially when the title's language would

mislead voters as to the significant changes made after review and comment.

The Title Board's decision to deny Petitioners' Motion for Rehearing should be reversed.

ARGUMENT

I. Despite arguments to the contrary, Title Board lacked jurisdiction to set title on Initiative #310.

Title Board lacked jurisdiction to set title for Initiative #310 because changes made to the measure after review and comment were both (a) so substantial as to create an entirely new measure and (b) unresponsive to comments raised during the review and comment process. Respondents' and the Title Board's attempts to distinguish Petitioners' arguments and assert that this Court lacks the ability to decide this issue are inconsistent with the relevant statutes and case law.

A. Changes made to Initiative #310 after review and comment substantially altered the intent and meaning of the measure and were not directly responsive to review and comment.

1. Because the changes to Initiative #310 substantially altered the measure's intent and meaning such that it effectively created a new measure, resubmittal for additional review and comment is required.

As Petitioners explained in their Opening Brief, although C.R.S. § 1-40-105(2) permits proponents to amend measures in response to review and comment, substantial amendments that either substantially alter the intent and meaning of the measure's central features or are unresponsive to comments during the review and comment process require resubmission to the Legislative Council. (*See* Pet'rs' Opening Br. at 10) (analogizing to *In re Proposed Initiated Constitutional Amendment Concerning Ltd. Gaming in the Town of Idaho Springs* ("*Idaho Springs*"), 830 P.2d 963, 968 (Colo. 1992).)

Respondents argue that it does not matter if the measure is fundamentally altered so long as all changes were responsive to review and comment. (*See* Resp'ts' Opening Br. at 6.) The Title Board adopts the same argument in a footnote. (*See* Title Board's Opening Br. at 7 n.5.)

Both Respondents and the Title Board cite to C.R.S. § 1-40-105(2), arguing that because the statute was amended after *Idaho Springs* and permits substantial amendment in direct response to comments during the review and comment process, then the substantial changes made to Initiative #310 are permitted. Notably, because neither Respondents nor the Title Board *contest* that the changes made after review and comment were substantial, they concede that the changes made to Initiative #310 after review and comment were substantial. *Rufner v. Makeen Fam. Tr.*, No. 19CA0604, 2020 WL 14046225 at *3 (Colo. App. Apr. 9, 2020) ("A party's failure to respond to an argument raised in the opposing party's principal brief may be taken as a concession.").

Respondents' and the Title Board's argument goes too far. While substantial amendment is permitted after review and comment per the amended version of C.R.S. § 1-40-105(2), that does not provide proponents carte blanche to make whatever changes they want to their measure so long as the changes are responsive to something mentioned during the review and comment process. Rather, there must be limits to the extent to which proponents can amend a measure.

This Court in *Idaho Springs* articulated the limiting factor. As this Court explained, "the adoption of language in a subsequent draft of a proposal that substantially alters the intent and meaning of central features of the initial proposal," such that "the revised document in effect constitutes an entirely different proposal," requires that the amended measure "must be submitted to the legislative offices for comment." 830 P.2d at 968 (citing C.R.S. § 1-40-101(1)). In other words, while substantial amendments in response to review and comment are permitted, they cannot go so far as to present an entirely different proposal.

Because the amendments made to Initiative #310 were so substantial as to alter the very nature of the measure (*i.e.*, changing it from an exception to the constitutional prohibition on ex post facto laws to a forward-looking measure), the amended version of Initiative #310 constitutes an entirely different proposal that must be resubmitted for additional review and comment.

2. Because the changes to Initiative #310 were unresponsive to review and comment, resubmittal is independently required.

Initiative #310 also must be resubmitted because even under Respondents' and the Title Board's interpretation, Respondents made a change to the measure unresponsive to review and comment. As Petitioners explained, the addition of "successors in interest" was not made in response to anything addressed at review and comment. (*See* Pet'rs' Opening Br. at 6, 17–18.) This addition differs from removing the retrospective aspect of the original version of the measure because adding "and their successors" was not required to divorce the measure from its original placement as an exception to the prohibition on ex post facto laws. Neither the Review & Comment Memorandum nor commentary at the subsequent hearing suggested this change. (*See* Review & Comment Hearing (Apr. 2, 2026), https://tinyurl.com/38jxc3xa.)

Rather than address this argument directly, Respondents broadly claim that all changes to the measure after review and comment were responsive to the Title Board's concerns. (*See* Resp'ts' Opening Br. at 6–9.) However, Section 1-40-105(2) requires that changes be in "***direct***

response," a standard the "successors in interest" addition fails to meet. (Emphasis added).

Accordingly, the addition of "successor in interest" was an impermissible addition necessitating resubmittal. *See Matter of Title, Ballot Title & Submission Clause, & Summary for 1997-98 No. 109*, 962 P.2d 252 (Colo. 1998).

B. The Title Board incorrectly argues that this Court lacks jurisdiction to review this issue because it is not explicitly enumerated in Section 1-40-107(1).

Making an argument that would insulate its determinations on jurisdiction from appellate review, the Title Board argues that because the statutory grounds for rehearing in Section 1-40-107(1) do not specifically list challenges to whether the Title Board has jurisdiction to consider an amended version of a measure as a ground for a motion for rehearing, this Court lacks jurisdiction to consider this issue. (*See* Title Board's Opening Br. at 6–7.) Yet, the Title Board also concedes that Section 1-40-105(2) requires resubmission for substantial amendments not made in direct response to review and comment. (*See id.* at 7 n.5.)

The Title Board provides no explanation of how such a mechanism functions if not through rehearing.

First, this Court has consistently considered challenges to compliance under Section 1-40-105(2) on appeal. For example, the petitioner in *In re Title, Ballot Title & Submission Clause for 2007-2008 #57*—a case cited by Respondents in their Opening Brief—challenged that the substantial changes to the measure warranted resubmittal for additional review and comment. 185 P.3d 142, 147–48 (Colo. 2008). This Court assessed the issue and held that the amendments were made in direct response to comments made during the review and comment process. *Id.* at 148 (affirming the Title Board's conclusion that the proponents were not required to resubmit the measure). This Court in *Idaho Springs* likewise considered a similar challenge by objectors. 830 P.2d at 966–68. This Court has never held that it lacks jurisdiction to hear such challenges.

Second, to the extent this Court determines this specific challenge to the Title Board's jurisdiction must be addressed in Section 1-40-107(1) to be raised on appeal, this challenge should be considered part of the

single-subject analysis. Section 1-40-107(1) states, in relevant part, that "Any person presenting an initiative petition or any registered elector who is not satisfied with a decision of the title board with respect to whether a petition contains more than a single subject ***pursuant to section 1-40-106.5*** . . . may file a motion for a rehearing . . . ." (emphasis added). Section 1-40-106.5 lists a number of practices intended to be inhibited by the single-subject requirement, including "to prevent surprise and fraud from being practiced upon voters." The statute likewise notes that the sections of the Colorado Constitution dealing with constitutional amendments and laws proposed by initiative should be construed liberally to prevent such practices. C.R.S. § 1-40-106.5.

Liberally construed, Section 1-40-107(1) impliedly permits resubmission claims as a basis for a motion for rehearing. Surprise and fraud would be practiced upon voters if fundamental and/or unresponsive changes were allowed without resubmission. Colorado voters are put on notice of ballot measure contents through the exchange between proponents and the Title Board. Allowing substantial, unresponsive

changes without resubmission vitiates the transparency the legislature intended.

Third, the statutes governing the Title Board process, when read in their entirety, contemplate such challenges. Words and phrases must be read in context, *see* C.R.S. § 2-4-101, and statutes relating to the same subject matter must be construed together to gather the legislature's intent. *Walgreen Co. v. Charnes*, 819 P.2d 1039, 1043 (Colo. 1991). Because, in enacting Section 1-40-105(2), the state legislature intended that substantial additions not responsive to review and comment trigger resubmission, and Section 1-40-107(1) provides the means to challenge the Title Board's actions in setting title, it follows that objectors should be able to raise such challenges in a motion for rehearing and on appeal. Indeed, if resubmission cannot be asserted through a motion for rehearing under C.R.S. § 1-40-107(1), the only method to enforce these requirements is through *sua sponte* action by the Title Board.

The Title Board therefore erred in asserting jurisdiction over Initiative #310 and setting title.

II. Respondents fail to meaningfully engage with Petitioners' clear title concerns, and the Title Board's arguments as to the same are unavailing.

Even if the Title Board had jurisdiction, Initiative #310's title fails to capture the measure's central features and misleads voters. As Petitioners explained in their Opening Brief, the title: (1) does not make clear that the measure applies only to oil and gas operations after the effective date of the measure; (2) fails to adequately describe what "successors in interest" means; and (3) does not explain the meaning of "joint and several liability," a legal term not commonly understood by the average voter. (*See* Pet'rs' Opening Br. at 20–22.) In response, Respondents and the Title Board primarily rely on the discretion the Title Board has in setting title and on case law conveying that a title need not be perfect or comprehensive. (*See* Resp'ts' Opening Br. at 9–12; Title Board's Opening Br. at 10–12.)

As to Petitioners' first argument, Respondents contend that laws are presumed to have a prospective effect. (*See* Resp'ts' Opening Br. at 11.) The Title Board likewise argues that the title captures the measure's central features and does not contain misleading language intimating

retroactive effect. (*See* Title Board's Opening Br. at 10–11.) These arguments ignore that the lay voter would not know from the title whether this measure would apply only prospectively. More clarity is needed, particularly where, as here, a measure's impact was modified from retrospective to prospective after review and comment, and a boilerplate applicability clause in the final text is the only evidence of such change. The title thus should provide an important backstop preventing voter confusion stemming from the fundamental changes Respondents made to the measure after review and comment. Given this likely confusion, Petitioners suggested three-word addition, (*see* Pet'rs' Opening Br. at 20), can hardly be characterized as transforming the title into an item-by-item paraphrase. It is a necessary change warranting remand.

As to the remaining clear title issues, Respondents and the Title Board rely entirely on the Title Board's discretion in setting title. (*See* Resp'ts' Opening Br. at 11–12; Title Board's Opening Br. at 11–12.) They argue that the Title Board had discretion to use "subsequent owners" as a proxy for "successors in interest" in the title because the latter is a legal

term of art with which most voters will be unfamiliar. (*See* Resp'ts' Opening Br. at 11–12; Title Board's Opening Br. at 11–12.) Yet, they also argue that the Title Board had discretion to allow the phrase "jointly and severally liable" in the title because most voters will be familiar with it and there was no succinct way to describe it in plain language. (*Id.*) While the Title Board has discretion to set title, that discretion is not unbounded. Neither the Title Board nor Respondents provide any support for the proposition that most voters will be unfamiliar with "successors in interest" but will be familiar with "jointly and severally liable."

Therefore, at minimum, Initiative #310 must be remanded to modify its title.

CONCLUSION

Petitioners respectfully request that the Court reverse the Title Board's denial of Petitioners' Motion for Rehearing and hold that the Title Board does not have jurisdiction to set title for Initiative #310 because: (1) proponents made substantial changes to the measure after review and comment that meaningfully altered its intent and effect; and

(2) proponents made changes to the measure after review and comment that were not responsive to review and comment. For those reasons, the Court should vacate the Title Board's decision and remand the measure to Respondents. And even if the Court holds that the Title Board did have jurisdiction to set title, the Court should nonetheless vacate the Title Board's title because it violates the clear title requirements and direct the Title Board to modify the title to address the concerns raised herein.

Respectfully submitted May 15, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2026, I electronically filed a true and correct copy of the foregoing **PETITIONERS' ANSWER BRIEF** via the Colorado Courts E-Filing system, which will send notification of such filing and service upon counsel of record:

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