SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	DATE FILED May 15, 2026 3:41 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 3,511 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 (collectively, "Petitioners"), through undersigned counsel, submit their Answer Brief in this original proceeding challenging the Colorado Ballot Title Setting Board's (the "Title Board") actions to set title on Proposed Initiative 2025-2026 #311 ("Initiative #311").

SUMMARY OF THE ARGUMENT

As described in Petitioners' Opening Brief, Initiative #311, a retaliatory ballot measure filed by proponents associated with Conservation Colorado and directly targeted at the oil and gas industry, suffers from several serious deficiencies. Although Respondents and the Title Board focus much of their Opening Briefs on jurisdictional and procedural questions, they fail to meaningfully engage with the significant single-subject, clarity, and clear title concerns raised by Petitioners in their Opening Brief.

As to Petitioners' single-subject concerns, Respondents and the Title Board contend that all aspects of the measure are necessary and proper to effectuate the identified single subject of holding oil and gas operators and waste injectors jointly and severally liable for damage to

underground drinking water sources caused by the generation or injection of exploration and production waste. Petitioners disagree. While the Title Board and Respondents contend the measure merely imposes joint and several liability to effectuate an existing regulatory scheme, Initiative #311 instead imposes a new regulatory requirement for remediation to "pre-damage condition" different than the existing liability for damages. This is outside the scope of imposing joint and several liability as to existing legal requirements.

As to Petitioners' argument that the Title Board also lacked jurisdiction to set title for Initiative #311 because it is so unclear and confusing that it cannot be understood, Respondents and the Title Board rest solely on their contention that such review is outside of the Title Board's jurisdiction and thus inappropriate for the Court's review. To the contrary, the law is clear that the Title Board lacks jurisdiction to set title where a measure cannot be understood sufficiently to set title. And Initiative #311's enforcement scheme is fatally unclear, resulting in an initiative that is so vague, confusing, and unclear that its true purpose cannot be understood by voters.

Finally, as to Petitioners' clear title arguments, Respondents and the Title Board contend that despite Petitioners' six identified concerns, the title is accurate, clear, and not misleading. However, Petitioners maintain that the title still suffers important deficiencies leading to voter confusion.

Therefore, given the various flaws identified, the Title Board's decision to deny Petitioners' Motion for Rehearing should be reversed. If this Court affirms the Title Board's determination on jurisdiction, Petitioners request that this Court remand the measure back to the Title Board to amend the title so that voters are not misled.

ARGUMENT

I. Contrary to Respondents' and Title Board's arguments that all provisions are necessarily and properly connected, Initiative #311 impermissibly contains multiple separate and distinct subjects.

As an initial matter, neither Respondents nor the Title Board assuage the concern that Initiative #311 contains multiple subjects. As stated by both Respondents and the Title Board, Initiative #311's single subject is imposing joint and several liability on oil and gas operators and waste injectors for damage to underground drinking water sources

caused by generation or injection of exploration and production waste. (*See* Title Board's Opening Br. at 2; Resp'ts' Opening Br. at 7.) But this stated subject omits one key aspect of the measure—it imposes a completely new regulatory remediation requirement.

Initiative #311's single subject, which appears simple on its face as stated by Respondents and the Title Board, hides that the measure would not only impose joint and several liability but also impose a new requirement on oil and gas operators and waste injectors. The Title Board fails to grasp this distinction, arguing that Initiative #311 merely imposes joint and several liability for violations already punishable under existing Colorado law. (*See* Title Board's Opening Br. at 8–9.) But under current law, oil and gas operators and waste injectors are not required to restore drinking water sources to their pre-damaged condition. *See* Energy & Carbon Management Commission ("ECMC") Rule 912.c.1 (requiring remediation to restore water quality to comply with the Water Quality Control Commission Regulation 41 numeric and narrative standards). As a result, Initiative #311 goes beyond merely applying joint and several liability to existing legal requirements to also

imposing a new requirement to restore the damaged underground drinking water sources to their "pre-damage condition." (*See* Pet. for Review, Ex. 1 at 13.) Regardless of whether remediation would be enforced through a new cause of action or injunctive relief (*see* Title Board's Opening Br. at 11), the new remediation requirement does not currently exist under federal or state law. The new remediation requirement thus significantly broadens the scope of the proposed statutory change.

Despite Respondents' and the Title Board's conclusory statements to the contrary, Initiative #311's inclusion of this overbroad remediation requirement is not necessarily and properly tailored to Initiative #311's purpose—imposing joint and several liability for damage to underground drinking water sources. *See Matter of Title, Ballot Title, & Submission Clause for Proposed Initiative 2025-2026 #158*, 585 P.3d 232, 237 (Colo. 2026) (quoting *In re Title, Ballot Title & Submission Clause for 2011-2012 #3*, 274 P.3d 562, 565 (Colo. 2012) ("While the initiative may include minor provisions necessary to effectuate its general objective or purpose, the subject matter of the initiative must be 'necessarily and properly

connected rather than disconnected or incongruous.'"); *see also id.* at 238 (explaining that "*changing* the current definition of "fee" is not necessary to effectuate the purpose of this Initiative," which was requiring voter approval of certain fees, and that "significant changes beyond [a measure's] central purpose" implicates the single-subject requirement). Each provision is *not* dependent upon and connected to the others or related to imposing joint and several liability for damage to underground drinking water sources, as the Title Board and Respondents argue. (*See* Title Board's Opening Br. at 9; Resp'ts' Opening Br. at 3, 8–9.) After all, remediation of underground sources of drinking water damaged by oil and gas operators is already required under Colorado statute. *See, e.g.*, ECMC Rule 912.c.1. Respondents instead chose to go beyond the existing ECMC requirements to require remediation to a wholly unclear "pre-damage condition" standard. This extension of required remediation constitutes a separate and distinct subject in violation of the single subject requirement.

Respondents further contend that Petitioners are concerned only with the effects of the measure on existing law. (Resp'ts' Opening Br. at

8.) Respondents miss the point. Petitioners' argument does not address "the efficacy, construction, or future application of an initiative," which are outside the scope of this Court's review. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 235(a)*, 3 P.3d 1219, 1225 (Colo. 2000). Rather, the expanded remediation requirement proposed through Initiative #311 significantly broadens the scope of the measure. Regardless of its effect on existing laws, this significant change in the remediation requirements imposed on oil and gas operators and waste injectors is not necessary to effectuate the intent of the measure. *See Matter of 2025-2026 #158*, 585 P.3d at 237 (holding that redefining the term "fee" in a measure aimed at requiring voter approval for certain fees was not necessary to effectuate the purpose of the initiative).

Moreover, Initiative #311's overly broad scope is further demonstrated through its dual-purpose nature. The Initiative is prospective—seeking to hold oil and gas operators and waste injectors jointly and severally liable for conduct causing damage to underground drinking water. But the Initiative is also backward-looking—requiring remediation of damaged underground drinking sources. These two

purposes are not necessarily and properly connected, and neither Respondents nor the Title Board offer a convincing argument to the contrary. (Title Board's Opening Br. at 11 (describing the two forms of liability as "distinct applications"); Resp'ts' Opening Br. at 8–9).

Each of the separate and distinct subjects identified above implicates the ills associated with omnibus measures. In reviewing whether a measure encompasses more than a single subject, the focus is on whether the initiative presents either of the two "evils" the single subject requirement aims to prevent: logrolling and voter surprise. *See Matter of Title, Ballot Title, & Submission Clause for 2021-2022 #16*, 489 P.3d 1217, 1224 (Colo. 2021). Voter surprise is implicated through both the overbroad remediation requirement and the measure's dual backwards and forward-looking nature. While voters may understand that Initiative #311 seeks to impose joint and several liability for damage to underground drinking water sources, they will likely be surprised to learn that the measure would impose the aforementioned new remediation requirement. This aspect of the measure is coiled up in its folds and not evident to voters. *In re Title, Ballot Title and Submission*

Clause for Proposed Initiative 2001-02 No. 43, 46 P.3d 438, 442 (Colo. 2002) (the single-subject requirement helps avoid "voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision 'coiled up in the folds' of a complex initiative"). Similarly, Initiative #311 presents significant logrolling risks, seeking to garner support from voters that may favor one aspect (requiring oil and gas operators to restore contaminated drinking water to pre-damage conditions) but disapprove of the other (imposing joint and several liability on these operators for harm caused), or vice versa. *Outcelt v. Bruce*, 961 P.2d 456, 464 (Colo. 1998) ("[T]he purpose of the single subject requirement of article V, section 1(5.5) is to prohibit the practice of putting together in one measure subjects having no necessary or proper connection for the purpose of garnering support for measures from parties who might otherwise stand in opposition.) (Kourlis, J., dissenting).

Because Initiative #311 spans multiple distinct subjects, the Title Board lacked jurisdiction to set title and the Title Board's denial of Petitioners' Motion for Rehearing should be reversed.

II. This Court can properly review whether the Title Board lacked jurisdiction to set title on Initiative #311 because the measure's enforcement mechanism is vague, confusing, and unclear.

Respondents and the Title Board assert that Petitioners' jurisdiction argument is improper because the Title Board lacks jurisdiction to set title only where the measure violates the single-subject requirement. (Title Board's Opening Br. at 14; Resp'ts' Opening Br. at 11.) Such an argument is divorced from both the reality of the Title Board process and the tenets of the single-subject requirement.

It is a commonly understood practice that where the Title Board cannot adequately understand a measure, it cannot set title. *See Hayes v. Ottke*, 293 P.3d 551, 555 (Colo. 2013) (quoting *In re Title, Ballot Title & Submission Clause, Summary for 1999-2000 No. 25*, 974 P.2d 458, 465 (Colo. 1999)) ("[I]f the Board cannot comprehend a proposed initiative sufficiently to state its single-subject clearly in the title, it necessarily follows that the initiative cannot be forwarded to the voters."). Indeed, the single-subject and clear title requirements are constitutional mandates that "the General Assembly has vested the Title Board with responsibility for carrying out[.]" *Id.* The Title Board's duty to refrain

from setting title on vague, confusing, and unclear measures "is especially true in light of the limited scope of [the Court's] review of actions taken by the Board." *In re 1999-2000 No. 25*, 974 P.2d at 465.

Tellingly, neither Respondents nor the Title Board substantively address Petitioners' argument regarding the measure's lack of clarity, instead relying solely on their incorrect assumption that this Court lacks jurisdiction to consider the argument. (Title Board's Opening Br. at 13–14; Resp'ts' Opening Br. at 10–11.) The Title Board lacks jurisdiction to set title on the Initiative because the substance of Initiative #311 is so vague, confusing, and unclear that it is impossible to set a title. Both the Initiative's text and title give the illusion that there is an already established and automatic enforcement mechanism. But that illusion does not align with reality. There is no explicit enforcement provision in Initiative #311, and it is unclear how the measure would intersect with existing enforcement mechanisms. (*See* Pet'rs' Opening Br. at 15–17.).

As described in Petitioners' Opening Brief, because the measure does not contain its own enforcement provision, it presumably relies on the regulatory and private cause of action enforcement mechanisms

already present in Article 60. C.R.S. §§ 34-60-114, 121. Initiative #311 contains no indication as to *which* of these enforcement mechanisms it seeks to avail itself of. Despite Respondents themselves admitting to this uncertainty at the Initiative's rehearing, their Opening Brief does nothing to clear this confusion. (*See* Title Board Rehearing at 1:03:33–1:05:30 (April 23, 2026), https://csos.granicus.com/player/clip/570; Resp'ts' Opening Br. at 9–11.) Adding further to the confusion, the Initiative's title and proposed statutory language do not align with enforcement through a private right of action. Under existing statute, the statutory limit for violations is $15,000. *See* C.R.S. § 34-60-121 (limiting the penalty for violations to $15,000 per act of violation per day). Initiative #311 does not override this statutory limit. Presumably, enforcement through a private right of action for "costs associated with" remediation could reasonably exceed the statutory damages cap.

This shortcoming in Initiative #311 presents significant questions making it impossible for the Title Board to fix a title that clearly expresses the intent of the Initiative and allows voters to intelligently answer "yes" or "no" to the measure. Accordingly, and contrary to

Respondents' and the Title Board's arguments, this uncertainty deprived the Title Board of jurisdiction to set title. Moreover, to the extent the Court agrees with the Title Board and Respondents that, despite such common practice, review on this issue is limited whether the measure violates the single-subject and clear title requirements, Initiative #311 fails even under that standard. For the reasons described above, the Initiative implicates multiple distinct subjects, which is exacerbated by the confusion surrounding the measure's enforcement. *See supra* Section I. And for the reasons explained below, the title is likewise misleading and confusing, violating the clear title requirement. *Infra* Section III.

III. The Initiative's title does not inform voters of critical features of the Initiative.

Respondents and the Title Board barely engage in any substantive response to Petitioners' clear title arguments. The Title Board must set a title that is "sufficiently clear and brief for the voters to understand the principal features of what is being proposed." *In re Title, Ballot and Submission Clause, and Summary for 1999-2000 No. 258(A)*, 4 P.3d 1094, 1098 (Colo. 2000). "Eliminating a key feature of the initiative from the titles is a fatal defect if that omission may cause confusion and mislead

voters about what the initiative actually proposes." *Id.* at 1099. Initiative #311's title does not abide by either aspect of the clear title standard.

Petitioners explained in their Opening Brief that the title set by the Title Board is misleading and incomplete in at least six ways:

1. The title does not explain how the post-review and comment addition of the applicability clause limits the measure's application to conduct or contracts entered into *after* the effective date of the measure. (Pet'rs' Opening Br. at 19–20.)

2. The title does not include language specifying the new remediation requirement described above that requires remediation of damaged underground drinking water sources to their "pre-damage condition." (Pet'rs' Opening Br. at 21.)

3. The title must clarify that only the responsible oil and gas operators and waste injectors are subject to joint and several liability for alleged damage to underground drinking water sources. (Pet'rs' Opening Br. at 21–22.)

4. The title is misleading and confusing because it does not make the measure's enforcement mechanism clear. (Pet'rs' Opening Br. at 22–23.)

5. "Joint and several liability" is not a common term that most voters will understand and the title must include language explaining the legal terminology. (Pet'rs' Opening Br. at 23.)

6. The title is misleading because it suggests that that the measure holds oil and gas operators and waste injectors jointly and severally liable for alleged damage to underground drinking water sources caused by the generation or injection of exploration in all circumstances and that the clauses after "in connection therewith" provide two of the possible

> examples of this. In reality, these two examples are the *only* instances where joint and several liability apply. (Pet'rs' Opening Br. at 23.)

According to Respondents, because the Title Board considered and rejected Petitioners' title concerns at Initiative #311's rehearing, the title must be clear, not misleading, and must inform voters of all the key components of the measure. (*See* Resp'ts' Opening Br. at 12–13.) The Title Board merely rests on the fact that the title "takes key words and phrases from the initiative nearly identically" and reorders "them in somewhat more natural language." (Title Board's Opening Br. at 16.) According to the Title Board, Petitioners' arguments amount to no more than "minor disagreements" over the title's language.

Both Respondents and the Title Board misapply the clear title standard. A title's similarity to the text of the Initiative is not the test for assessing whether the title is confusing or misleading, or whether it fairly and accurately depicts key features of the Initiative. Likewise, the fact that the Title Board previously considered Petitioners' arguments and made no changes to the title does not demonstrate that the title passes constitutional muster. Indeed, this Court has consistently vacated titles

when the title set by the Title Board was misleading, including when it omitted a key feature of the measure. *See In re 1999-2000 No. 258(A)*, 4 P.3d at 1098–99 (reversing the action of the Title Board when the title failed to articulate "that school districts and schools cannot be required to offer bilingual programs," because that omission could confuse voters).

The key features identified above and in Petitioners' Opening Brief are central features of Initiative #311 that must be included in the measure's title.

First, the late addition of the applicability clause after the review and comment hearing fundamentally altered the measure. While Petitioners do not disagree with Respondents' argument that "laws are presumed to have a prospective effect unless a contrary intent is expressed in the language," (Resp'ts' Opening Br. at 13), such a canon of construction is not apparent to the average voter. This is particularly important with oil and gas measures such as this one because the conduct (*i.e.*, the oil and gas operations and waste injections) often occurs years before any alleged harm manifests. Absent clarifying language, voters would likely assume that if the alleged harm manifests after the measure

is passed, then joint and several liability would apply. This assumption, however, is incorrect.

Second, without specific language identifying the new remediation requirement—restoration to "pre-damage" condition—the Initiative's title is misleading. The title's language on this point, which states that the measure would "hold[] operators and waste injectors liable for all costs to restore the drinking water source," ignores the issue altogether. "Restor[ing]" a drinking water source per current remediation requirements differs from restoring the source to its pre-damaged condition. The former addresses restoration to specific numerical levels, while the latter is based on the water source's condition, regardless of the relationship between the water source's pre-damaged condition and water quality standards. Thus, as currently written, the title effectively hides the full scope of the measure and incorrectly signals to voters that Initiative #311 does not impose a new remediation requirement.

Third, adding clarifying language making clear that joint and several liability would extend only to the *responsible* oil and gas operators and waste injectors will lessen voter confusion. Respondents

acknowledged as much at the Title Board Rehearing. (*See* Title Board Rehearing at 1:02:17–1:02:50 (April 23, 2026).)

Fourth, as further described above, the title must make clear the Initiative's enforcement mechanism to avoid voter confusion. Otherwise, voters will assume automatic liability applies, rather than the nuanced enforcement mechanisms in Article 60.

Fifth, contrary to Respondents' and the Title Board's assertions, "joint and several liability" has more impact than the average voter understands. For example, an oil and gas operator or waste injector responsible for only 5% of the alleged harm could be held liable for 100% of the damages. The mechanics behind joint and several liability are not clear from the text of the title. The meaning of joint and several liability must be clarified in the title using plain language so voters understand the full scope of what they are deciding.

Sixth, and finally, the title language as currently drafted would mislead voters into believing that the measure would hold oil and gas operators and waste injectors jointly and severally liable for alleged damage to underground drinking water sources caused by the generation

or injection of exploration in *all* circumstances. However, the two categories listed after the "in connection therewith" clause are the *only* instances where joint and several liability would apply. The title thus would give voters the false impression that Initiative #311 would impose liability in broader contexts.

Thus, even if the Title Board did have jurisdiction to set title, its determination should be vacated because the title it set is inaccurate and misleading.

CONCLUSION

For the reasons stated above, Petitioners respectfully request the Court to reverse the Title Board's denial of Petitioners' Motion for Rehearing.

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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