

<p><b>SUPREME COURT OF COLORADO</b>  2 East 14th Avenue  Denver, Colorado 80203</p>	<p>DATE FILED  May 15, 2026 3:59 PM</p>
<p>Original Proceeding Pursuant to C.R.S. §  1-40-107(2)</p> <p>Appeal from the Colorado Ballot Title  Setting Board</p> <p><b>Petitioners:</b> Lynn Granger and Carly  West</p> <p>v.</p> <p><b>Respondents:</b> Sidra Aghababian  and Jessica Arhontoulis</p> <p><b>Colorado Ballot Title Setting Board:</b>  Theresa Conley, Christy Chase, and Kurt  Morrison.</p>	<p>▲ <b>COURT USE ONLY</b></p>
<p><b>Attorneys for Petitioners:</b></p> <p>Jason R. Dunn, #33011  David B. Meschke, #47728  Reilly E. Meyer, #59495  BROWNSTEIN HYATT FARBER  SCHRECK LLP  675 15th St, Suite 2900  Denver, CO 80202  Tel: 303.223.1100  Fax: 303.223.1111  jdunn@bhfs.com; dmeschke@bhfs.com;  and rmeyer@bhfs.com</p>	<p>Case  Number:2026SA155</p>
<p><b>PETITIONERS' ANSWER BRIEF</b></p>	

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

**The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).**

It contains 1,852 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

**TABLE OF CONTENTS**

	Page
SUMMARY OF THE ARGUMENT .....	1
ARGUMENT .....	3
I.    This Court can properly review whether the Title Board lacked jurisdiction to set title on Initiative #313 because the measure’s enforcement mechanism is vague, confusing, and unclear. ....	3
II.   Respondents’ and the Title Board’s arguments fail to rescue Initiative #313’s title from being inaccurate and misleading. ....	6
CONCLUSION .....	10

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Hayes v. Ottke</i> , 293 P.3d 551 (Colo. 2013) .....	4, 5
<i>In re Ballot Title 1997–1998 # 62</i> , 961 P.2d 1077 (Colo. 1998) .....	6
<i>In re Proposed Initiated Constitutional Amendment Concerning the Fair Treatment of Injured Workers Amendment</i> , 873 P.2d 718 (Colo. 1994) .....	6
<i>In re Title, Ballot Title &amp; Submission Clause, Summary for 1999-2000 No. 25</i> , 974 P.2d 458 (Colo. 1999) .....	4
<b>Statutes</b>	
C.R.S. § 1-40-106(3)(b).....	6

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 #313 (“Initiative #313”).

### **SUMMARY OF THE ARGUMENT**

Initiative #313 is a retaliatory ballot measure filed by proponents associated with Conservation Colorado to directly target the oil and gas industry. Specifically, Initiative #313 would impose strict liability on oil and gas operators, owners, and producers for damages resulting from their oil and gas operations.

As described in Petitioners’ Opening Brief, Initiative #313 suffers from two critical deficiencies. First, the Title Board erred in setting title for Initiative #313 because the measure itself is so vague, confusing, and unclear that its true meaning cannot be understood by the average voter. While the measure’s central focus would impose strict liability for damages from oil and gas operations regardless of fault or conduct, the measure’s applicability clause limits the measure’s application to “conduct” occurring after its effective date. These two concepts are

antithetical to each other because strict liability is imposed regardless of conduct or fault, and thus voters would be confused regarding what Initiative #313 proposes. This uncertainty deprives the Title Board of jurisdiction to set title. Respondents and the Title Board fail to meaningfully address Petitioners' argument on this point, instead relying on blanket assertions regarding single-subject compliance and the Title Board's jurisdiction that do not engage with the deficiencies identified by Petitioners. Neither Respondents' nor the Title Board's arguments provide any clarity to the vague and confusing measure.

Second, the title set for Initiative #313 is also inaccurate and misleading in violation of the clear title requirement. Specifically, the late addition of an applicability clause to the Initiative resulted in a disjointed measure that leads to more questions than answers. As a result, the title's use of the word "conduct" in a measure focused on strict liability creates confusion as to whether the measure applies retroactively. The title's reference to "operations" and failure to clarify what "conduct" means leaves ambiguous what types of events trigger strict liability. And the placement in the title of language attempting to

define the strict liability standard obfuscates whether that language is in fact defining strict liability or articulating a different applicable standard. These deficiencies render the title inaccurate and misleading. Respondents and the Title Board fail to engage substantively with these arguments, relying instead on perfunctory assertions regarding the Title Board's discretion.

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

### ARGUMENT

I. **This Court can properly review whether the Title Board lacked jurisdiction to set title on Initiative #313 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 in narrow circumstances such as where the measure violates the single-subject requirement. (Title Board's Opening Br. at 4–8; Resp'ts' Opening Br. at 4.) 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 4–8; Resp’ts’ Opening Br. at 4–6.) The Title Board responds to Petitioners’

arguments only by insisting that Initiative #313 does not violate the single-subject requirement, which is an argument Petitioners have not made. (Title Board’s Opening Br. at 4–8.) Respondents posit that aside from “making substantial changes to initiative language without resubmitting the initiative for a new Review and Comment hearing” or “failing to have both designated representatives present at a Review and Comment meeting or Title Board hearing,” the only “substantive reason” the Title Board lacks jurisdiction to set title is when the single subject requirement is violated. (*See* Resp’ts’ Opening Br. at 5.) Respondents’ argument contradicts *Hayes* and must be rejected.

Here, the Title Board lacked jurisdiction to set title on Initiative #313 because the measure is so vague, confusing, and unclear that its true meaning cannot be understood by the average voter and thus it is impossible to set a title. The last-minute addition of the applicability clause to Initiative #313 creates significant confusion regarding the standard and scope of liability implicated by the Initiative. Critically, it is not clear whether liability extends retroactively or not, or how an applicability clause based on the timing of “conduct” can coexist with a

strict liability scheme. Indeed, if the Title Board has jurisdiction over unclear measures that make it difficult, if not impossible, for voters to determine whether to support or oppose that measure, the entire statutory scheme surrounding citizen ballot measures would be undermined.

**II. Respondents’ and the Title Board’s arguments fail to rescue Initiative #313’s title from being inaccurate and misleading.**

As described in Petitioners’ Opening Brief, Initiative #313’s title fails to delineate between retroactive and prospective effect, is vague about what events trigger strict liability, and creates confusion for voters regarding the strict liability standard. (See Pet’rs’ Opening Br. at 12–16.). These deficiencies render the title inaccurate and misleading, in violation of the clear title requirement. The Title Board has the “duty [] to ensure that the title . . . fairly reflects the proposed initiative so that petition signers and voters will not be misled . . .” *In re Ballot Title 1997–1998 # 62*, 961 P.2d 1077, 1082 (Colo. 1998) (quoting *In re Proposed Initiated Constitutional Amendment Concerning the Fair Treatment of Injured Workers Amendment*, 873 P.2d 718, 719 (Colo. 1994)); see also C.R.S. § 1-

40-106(3)(b) (a measure’s title must “correctly and fairly express the true intent and meaning” of the measure).

Respondents and the Title Board give only cursory treatment to these arguments in their Opening Briefs. As to whether the title’s use of the word “conduct” in a measure focused on strict liability creates confusion as to whether the measure will apply retroactively, Respondents assert that laws are presumed to have prospective effect and that titles are intended to be short statements summarizing the central features of a measure rather than an item-by-item paraphrase. (*See* Resp’ts’ Opening Br. at 7–8.) But this argument ignores the intention of the clear title requirement—to prevent voters from being misled. The average voter does not know that laws are presumed to have a prospective effect. This is particularly important with oil and gas measures such as this one because the conduct (*i.e.*, the oil and gas operations) 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 strict liability would apply. This assumption, though, is incorrect.

The title must provide more clarity where, as here, a measure contains a boilerplate applicability clause not narrowly tailored to the measure itself and that obscures whether the measure has retroactive effect. The three-word addition proposed by Petitioners would ameliorate this issue. (*See* Pet’rs’ Opening Br. at 14 (suggesting the addition of the following language to the title (if accurate): “. . . resulting from their current and future oil and gas operations . . .”.) This is a necessary change warranting a remand.

As to Petitioners’ argument that the title refers only to “operations” and thus fails to clarify what “conduct” means in the context of this measure, Respondents fail to substantively engage and instead rely entirely and summarily on the discretion afforded the Title Board in setting title to justify the title’s ambiguity. (*See* Resp’ts’ Opening Br. at 8–9.) While the Title Board certainly has discretion to set title, that discretion is not unbounded. Titles set by the Title Board must be fair, clear, accurate, and complete. The significant questions left through the omission of one of the Initiative’s key terms violate the clear title requirement.

As to Petitioners' argument that the language defining strict liability in the title makes it unclear whether such language is defining strict liability or instead articulating a different applicable standard, Respondents again fail to meaningfully respond. Such perfunctory treatment of Petitioners' argument, devoid of analysis as to the confusion that may result from inclusion of the haphazard and unnecessary language, is not sufficient to defeat Petitioners' clear title concerns.

The Title Board, in turn, presents the same argument in response to all three of Petitioners' clear title arguments. According to the Title Board, Initiative #313's title fairly and accurately describes the measure because it takes words and phrases from the Initiative "nearly identically," and because Petitioners' arguments amount only to minor disagreements that do not render the title unfair or misleading. (*See* Title Board's Opening Br. at 11.) The Title Board does not provide any support for its assertion that including words and phrases directly from the Initiative itself insulates the title from clear title challenges. (*See id.*) Nor could it. If a measure itself is unclear, like it is here, then simply mirroring the language in the measure itself cannot lead to a clear title.

Instead, the Title Board simply concludes that if a title contains what it considers to be “key” words and phrases from the measure itself, then the title incorporates the central features of the measure and fairly and accurately describes it. Not only does this argument fail to substantively engage with Petitioners’ clear title arguments, but it would also afford the Title Board increased and unwarranted discretion.

### **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 #313 because the measure is so vague, confusing, and unclear that it cannot be understood. For this reason, 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.

BROWNSTEIN HYATT FARBER SCHRECK  
LLP

/s/ Jason R. Dunn

Jason R. Dunn, #33011

David B. Meschke, #47728

Reilly E. Meyer, #59495

675 15th St, Suite 2900

Denver, CO 80202

Tel: 303.223.1100

Fax: 303.223.1111

jdunn@bhfs.com; dmeschke@bhfs.com; and

rmeyer@bhfs.com

*Attorneys for Petitioners Lynn Granger and Carly  
West*

**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:

Emily Buckley, Esq.  
Office of the Colorado Attorney General  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 6th Floor  
Denver, CO 80203  
emily.buckley@coag.gov  
*Counsel for the Title Board*

Martha Tierney, Esq.  
Tierney Lawrence Stiles LLC  
225 East 16th Avenue, Suite 350  
Denver, CO 80203  
Telephone: 303-949-7676  
Email: mtierney@TLS.legal  
*Counsel for Respondents*

/s/ Rachael Cotner  
Rachael Cotner, Paralegal