

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED May 8, 2026 1:46 PM</p>
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2025) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2025-2026 #310</p>	
<p>Petitioners: Lynn Granger and Carly West v.</p>	
<p>Title Board: Theresa Conley, Christy Chase, and Kurt Morrison. and Respondents: Sidra Aghababian and Jessica Arhontoulis</p>	<p>▲ COURT USE ONLY ▲ Case No. 2026SA150</p>
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<p>THE TITLE BOARD'S OPENING BRIEF</p>	

CERTIFICATE OF COMPLIANCE

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

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

It contains 2,063 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).

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.

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/ Talia Kraemer

TALIA KRAEMER

Assistant Solicitor General

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ISSUES ON REVIEW

Whether this Court lacks jurisdiction to consider the first two issues listed in the petition, regarding whether Proposed Initiative 2025-2026 #310 was required to be resubmitted for review and comment following changes made to it after the review and comment hearing, because § 1-40-107(1), C.R.S., does not permit motions for rehearing on that basis, and thus this Court lacks jurisdiction under § 1-40-107(2), C.R.S.

Whether the Title Board acted within its discretion in setting title that accurately describes Proposed Initiative 2025-2026 #310.

STATEMENT OF THE CASE

Proposed Initiative 2025-2026 #310 (“#310”) seeks to hold oil and gas operators jointly and severally liable for damages resulting from their oil and gas operations. *See* Record at 9. The measure would apply to “current oil and gas operators and their successors in interest,” for “conduct occurring or contracts entered into on or after the effective date” of the measure. *Id.*

The General Assembly’s Legislative Council Staff and Office of Legislative Legal Services issued a Review and Comment Memorandum on #310 on March 27, 2026.¹ A notice and comment hearing was held on April 2, 2026. Thereafter, the initiative’s proponents submitted an amended version of the measure in response to comments received through the Memorandum and hearing.

On April 15, 2026, the Title Board (“Board”) held a hearing on #310. Record at 7. At the hearing, Petitioners argued that the proponents of #310 were required to resubmit the initiative for additional review and comment, because the amendments to #310 were substantial and not all made directly in response to comments received during the review and comment period. Title Board Meeting (Apr. 15, 2026).² The Board rejected Petitioners’ argument, finding that all amendments to #310 were made in response to comments during the

¹ Available at: https://leg.colorado.gov/initiative_files/3534/download.

² Recording available at https://csos.granicus.com/player/clip/559?view_id=1&meta_id=23031&re_direct=true.

review and comment period or were related clarifications. *See In re Title, Ballot Title & Submission Clause, & Summary for 1999-00 #256*, 12 P.3d 246, 251–53 (Colo. 2000) (changes made in response to comments or as clarifications did not require resubmission); § 1-40-105(2)³ (“If any substantial amendment is made to the petition, *other than* an amendment in direct response to the comments of the directors of the legislative council and the office of legislative legal services, the amended petition must be resubmitted to the directors for comment in accordance with subsection (1) of this section” (emphasis added)). The Board concluded that #310 contained a single subject and set title.

Petitioners filed a timely motion for rehearing, again arguing that the Board lacked jurisdiction over #310 because it needed to be resubmitted. Record at 2-4. They also argued that the title set on April 15th was unclear and misleading. *Id.* at 4-5. On April 23, 2026, the Board denied the motion for rehearing in its entirety. *Id.* at 8. In so doing, the Board noted that current Colorado law only requires

³ All statutory citations are to the Colorado Revised Statutes.

measures to be resubmitted following changes that are both substantial and not made in response to comments received during the review and comment process. The Board also pointed out that Petitioners argument on the need for resubmission was not an appropriate grounds for a motion for rehearing under § 1-40-107.⁴

In their Petition for Review, Petitioners revive these objections. They argue the amendments to #310 converted it into “an entirely different measure requiring refiling.” Pet. for Review at 3. They also assert that the title is unclear because it (1) does not state that #310 applies only to conduct occurring or contracts entered into after the date of the measure; (2) uses the phrase “subsequent owners” instead of “successors in interest”; and (3) does not define the phrase “joint and several liability.” *Id.*

⁴ Recording available at https://csos.granicus.com/player/clip/570?view_id=1&redirect=true.

SUMMARY OF ARGUMENT

The Petition should be denied in full. This Court lacks jurisdiction over Petitioners claims that #310 required resubmission for additional review and comment, because that is not one of the enumerated statutory grounds for a motion for rehearing before the Board. As a result, this Court lacks jurisdiction to hear an appeal from such a motion.

Petitioners' clear title challenge should also be rejected. The title set by the Board on rehearing plainly informs voters that #310 would impose joint and several liability on oil and gas operators, as well as those who later acquire an ownership interest in their operations, for damage caused by those operations. Because the title need not set out an initiative's every detail, the Board was not required to further specify that #310 would apply only prospectively. Nor does the title mislead voters by (1) using the plain-language phrase "subsequent owners" instead of "successors in interest," or (2) using the exact

language of the initiative, “joint and several liability,” in the title. The Board’s determinations should be affirmed.

ARGUMENT

I. The Court lacks jurisdiction over Petitioners’ appeal on the question of whether #310 was required to be resubmitted for review and comment.

A. Standard of review and preservation

Under § 1-40-107(2), this Court only has jurisdiction to review appeals from a properly filed motion for rehearing. *Chilson v. Bertolacci*, 550 P.3d 718, 719-20 (Colo. 2024). A motion for rehearing is properly filed if it is based on one of several enumerated statutory grounds. *Id.* Those are: (1) “whether a ballot measure contains more than a single subject pursuant to section 1-40-106.5”; (2) “whether the title adopted by the Title Board is ‘unfair’ or ‘does not fairly express the true meaning and intent’ of the measure”; (3) “whether the fiscal summary is misleading or prejudicial or does not comply with the requirements set forth in section 1-40-105.5(1.5)”; and (4) “whether a measure ‘that proposes a constitutional amendment only repeals in whole or in part a provision of the state constitution.’” *Id.* at 721-22

(quoting C.R.S. § 1-40-107(1)(a)). Motions for rehearing based on other grounds are not properly filed. *Chilson*, 550 P.3d at 722.

The Board agrees that Petitioners preserved the issue of whether #310 needed to be resubmitted for further review and comment. It was raised in Petitioners' motion for rehearing, which was denied by the Board. *See Record* at 2-4, 8. However, the Board disputes that this Court has jurisdiction to review this issue.

B. Petitioners' motion for rehearing was improper, because it was not based on one of the enumerated statutory grounds.

The statutory grounds for rehearing in § 1-40-107(1) do not include the question of whether an amended initiative was required to be resubmitted for additional review and comment. Accordingly, § 1-40-107(2) does not confer jurisdiction on this Court to hear an appeal from such a motion. Petitioners claim related to resubmission of #310 should therefore be dismissed. *Chilson*, 550 P.3d at 722.⁵

⁵ Even if this Court had jurisdiction to consider the issue of whether #310 required resubmission, Petitioners misapprehend the applicable

II. The title set by the Board satisfies the clear title standard.

A. Standard of review and preservation

When considering a challenge to a title, the Court does not “consider whether the Title Board set the best possible title.” *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 17.

“The Title Board’s duty in setting a title is to summarize the central

law. Their motion for rehearing relied heavily on a 1992 decision of this Court, *Matter of Title, Ballot Title & Submission Clause, & Summary Approved Feb. 12, 1992*, 830 P.2d 963 (Colo. 1992), to argue that a measure must be resubmitted any time “changes substantially alter[] the intent and meaning” of an initiative, even if those changes are made in response to the review and comment process. Record at 3. But that 1992 case relied on a statute that was subsequently amended, and the later amendment makes clear that substantial amendments to initiatives must be resubmitted only if they are not made in direct response to the review and comment process. See § 1-40-105(2)⁵ (“If any substantial amendment is made to the petition, *other than* an amendment in direct response to the comments of the directors of the legislative council and the office of legislative legal services, the amended petition must be resubmitted to the directors for comment in accordance with subsection (1) of this section” (emphasis added)). That principle has been subsequently affirmed by this Court. See *In re Title, Ballot Title & Submission Clause, & Summary for 1999-00 #256*, 12 P.3d 246, 251–53 (Colo. 2000) (concluding without further inquiry that changes made in response to comments did not require resubmission).

features of a proposed initiative.” *In re 2013-2014 #90*, 2014 CO 63, ¶ 24. The Board “is given discretion in resolving interrelated problems of length, complexity, and clarity in setting a title and ballot title and submission clause.” *Id.* The titles set must be “fair, clear, and accurate titles that do not mislead the voters through a material omission or misrepresentation, but the titles need not spell out every detail of a proposal.” *In re 2015-2016 #63*, 2016 CO 34, ¶ 23 (cleaned up).

The Board agrees that Petitioners preserved their challenge to #310’s title. *See* Record at 5.

B. The title for #310 is accurate and materially complete.

The title set by the Board for #310 accurately reflects the initiative. #310 would add a new section to the Colorado Constitution stating:

Joint and several liability shall apply to current oil and gas operators and their successors in interest for any damages resulting from their oil and gas operations, including personal injury, property damage, and environmental harm.

Record at 9. It also contains a section on “Applicability,” which states that #310 “applies to conduct occurring or contracts entered into on or after the effective date of this measure.” *Id.*

The title set by the Board tracks the initiative closely. It describes #310 as: “An amendment to the Colorado Constitution holding oil and gas operators, and subsequent owners of their operations, jointly and severally liable for any damages, including personal injury, property damage, and environmental harm, resulting from their oil and gas operations.” Record at 8. The title is clear, specific, and captures the essential features of the initiative. It satisfies the clear title standard.

Petitioners contend the title is misleading for three reasons, but none has merit. First, they contend the title may mislead voters because it does not state that #310 applies only to contracts and conduct occurring after the effective date. Record at 5. But a title “need not spell out every detail of a proposal.” *In re 2015-2016 #63*, 2016 CO 34, ¶ 23 (cleaned up). The title for #310 unquestionably captures its “central features,” *In re 2013-2014 #90*, 2014 CO 63, ¶ 24, which are the

imposition of joint and several liability on oil and gas operators for any damages resulting from their oil and gas operations. Nor does anything in the title misleadingly suggest that the measure would apply retroactively.

Second, Petitioners argue the title does not fully describe #310 because it uses the phrase “subsequent owners of their operations,” instead of the phrase appearing in the text of #310 itself, “successors in interest,” to describe those on whom liability would be imposed. Record at 5. But that distinction does not make the title misleading. The title puts voters on notice that #310 applies not only to current oil and gas operators but also to those who later acquire interest in their operations, while using plain language instead of specialized legal terminology. It was within the Board’s discretion to balance these competing needs in setting title.

Third—and directly contrary to their second argument—Petitioners argue that the title may confuse voters because it uses the phrase “joint and several liability”—the exact phrase appearing in the

text of #310—which is a legal term of art. But it was within the Board’s discretion to determine that attempting to translate “joint and several liability” into lay terms would miss nuance inherent in the phrase, which is the core feature of the initiative. And the title can hardly be deemed misleading given that it exactly tracks the initiative’s text.

The title for #310 satisfies the clear title standard.

CONCLUSION

The Court should dismiss the petition to the extent it asks this Court to decide that #310 was required to be resubmitted for review and comment and affirm the title set by the Board.

Respectfully submitted on this 8th day of May, 2026.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE TITLE BOARD'S OPENING BRIEF** upon the following parties electronically via CCEF, at Denver, Colorado, this 8th day of May, 2026, addressed as follows:

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