COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE 2025-2026 #310

MOTION FOR REHEARING

On behalf of Lynn Granger and Carly West (collectively, the "Objectors"), registered electors of the State of Colorado, the undersigned counsel hereby submit this Motion for Rehearing for Proposed Initiative 2025-2026 #310 ("Initiative #310") pursuant to C.R.S. § 1-40-107, and as grounds therefore state as follows:

This Motion seeks the Title Board's review for two reasons: (1) the Title Board lacks jurisdiction to set title because certain changes made after the review and comment hearing were not responsive to review and comment and substantially altered the intent and meaning of the measure; and (2) the title set for the proposed measure fails to accurately describe the measure and would mislead voters.

With this Motion for Rehearing, the Objectors incorporate all arguments made at the Title Board hearing for Initiative #310 held on April 15, 2026.

I. THE TITLE BOARD LACKS JURISDICTION OVER INITIATIVE #310 BECAUSE CHANGES MADE TO THE MEASURE AFTER THE REVIEW AND COMMENT HEARING SUBSTANTIALLY ALTER THE MEASURE AND WENT BEYOND AMENDMENTS MADE IN RESPONSE TO REVIEW AND COMMENT.

The changes made to Initiative #310 after review and comment were improper for two reasons. *First*, the changes made to Initiative #310 substantially alter the measure and require that the measure be resubmitted. *Second*, the changes made to the measure went beyond the changes discussed at the review and comment hearing, contrary to statutory limitations.

a. THE CHANGES MADE TO INITIATIVE #310 AFTER REVIEW AND COMMENT SUBSTANTIALLY ALTERED THE INTENT AND MEANING OF THE MEASURE.

Section 1-40-101(1) of the Colorado Revised Statutes requires that new proposals for citizen-initiated ballot measures be submitted for comment at a public meeting (*i.e.*, the review and comment hearing.)

Based on this requirement, the Colorado Supreme Court has held that if a ballot measure makes substantial changes after review and comment that fundamentally alter the nature of the measure then the measure must be resubmitted for additional review and comment, regardless of whether those

changes were made in response to issues raised during the review and comment hearing. In *In re Proposed Initiated Constitutional Amendment Concerning Ltd. Gaming in the Town of Idaho Springs* the Colorado Supreme Court made it clear that when "the adoption of language in a subsequent draft of a proposal [] substantially alters the intent and meaning of central features of the initial proposal," "the revised document in effect constitutes an entirely different proposal" and "must be submitted to the legislative offices for comment." 830 P.2d 963, 968 (Colo. 1992). "The public's right to understand the contents of an initiative in advance of its circulation would be completely eradicated if the intent and meaning of the central features of a proposal submitted to the Board for the purpose of fixing a title thereto is substantially different from the intent and meaning of the central features of an earlier version thereof that was submitted to the legislative offices." *Id.* Where the "substantial alteration of the intent and meaning of a central feature of the initial proposal in effect creates a new proposal that must be submitted to the legislative offices for comment at a public meeting[,] . . . the absence of such meeting [deprives] the Board [of] authority to fix a title for the proposed amendment." *Id.*

In the review and comment memorandum for Initiative #310, Legislative Council and the Office of Legislative Legal Services identified the major purpose of the measure as "to apply joint and several liability to current and ***previous*** oil and gas operators, owners, or producers for any damages resulting from oil and gas operations, including but not limited to personal injury, property damage, and environmental harm." (Emphasis added). Commentary at the review and comment hearing addressed that Initiative #310, as written, violated the Colorado Constitution's bar on ex post facto laws. *See* COLO. CONST. art. II, § 11. Proponents then altered the measure to make it forward-looking.

But, although the changes made were in response to review and comment, these changes substantially altered the intent and meaning of Initiative #310. Before review and comment, Initiative #310 was an amendment to Section 11 of Article II of the Colorado Constitution, providing an exception to the prohibition on ex post facto laws. After review and comment, Initiative #310 now adds a new Section 17 to Article 18 of the Colorado Constitution. Thus, the ex post facto element has been entirely removed, and the amended measure now seeks to add a new section to the Colorado Constitution in a completely different article – the "Miscellaneous" Article in the Colorado Constitution. Likewise, prior to review and comment, Initiative #310 applied to all current ***and prior*** oil and gas operators. Now, after review and comment, the measure applies to current oil and gas operators and their successors.

As a result, the changes made to Initiative #310 after review and comment constitute a "substantial alteration of the intent and meaning of a central feature of the initial proposal in effect creat[ing] a new proposal." *In re Ltd. Gaming in the Town of Idaho Springs*, 830 P.2d at 968. Initiative #310 has switched from being a backwards-looking to forward-looking and thus has a substantially different intent

and meaning than the version originally submitted for review and comment. Such conduct divests the Title Board of jurisdiction over the amended measure. Therefore, the amended Initiative #310 must be resubmitted so that Legislative Council and the Office of Legislative Legal Services can comment on this entirely new proposal.

b. PROPONENTS MADE ADDITIONAL CHANGES TO INITIATIVE #310 THAT WERE NOT IN RESPONSE TO REVIEW AND COMMENT.

Section 1-40-105(2) of the Colorado Revised Statutes requires that if substantial amendment is made to a ballot measure that is not in direct response to comments made at review and comment hearing, the measure must be resubmitted. Initiative #310's review and comment hearing was held on April 2, 2026. At the hearing, proponents discussed with Legislative Council and the Office of Legislative Legal Services extensive changes to the measure. While proponents indeed made the changes discussed, they also went further.

Specifically, proponents made a significant addition to the measure that was not discussed during review and comment—the measure now applies to current oil and gas operators ***and their successors in interest***. This alteration is different from removing the retroactive aspect of the original version of the measure. The proponents did not need to add "and their successors" to divorce the measure from its original placement as an exception to the prohibition on ex post facto laws. The review and comment memorandum did not suggest this change either. The proponents could simply have kept that the measure applies to current operators. But they did more.

Because this change was not discussed either the review and comment memorandum or the review and comment hearing, it is an impermissible addition. Accordingly, under C.R.S. § 1-40-105(2), the measure should be resubmitted.

II. THE TITLE FAILS TO ACCURATELY DESCRIBE THE MEASURE AND WOULD MISLEAD VOTERS.

Even if the Title Board were to affirm it has jurisdiction to set a title, setting a title for Initiative #310 is problematic for at least three reasons. The draft title approved at the April 15th hearing must be amended so that the title fully and accurately captures the measure's central features and does not mislead voters.

First, the title does not make clear that the measure applies only to conduct or contracts entered into after the effective date of the measure. As currently written, the title suggests that the timeline for joint and several liability is the duration of oil and gas operations on the site. Under the plain text of the measure, however, that is not the case. The title therefore must be changed to clarify this aspect. For example, language could be added that specifies that the measure applies to "current and future" oil and gas operations. Otherwise, there is a risk

that voters vote for the measure incorrectly thinking that it would hold oil and gas operators jointly and severally liable for their *past* operations.

Second, the title states that the measure imposes liability on "oil and gas operators, and subsequent owners of their operations." The text of the measure, however, imposes liability on current oil and gas operators ***and their successors in interest***." "Successors in interest" could be understood as encompassing a broader group than "subsequent owners." The title should use the same or similar language to that in Initiative #310 in order to adequately describe the measure.

Third, the term "joint and several liability" is a legal term that is not commonly understood by the average voter and may lead to confusion. Thus, the title should include a plain language definition of the term to assuage any potential confusion and allow voters to fully understand the measure. For example, the title could convey in plain terms that the measure would make oil and gas operators and their successors collectively and individually responsible for the entire amount of damages, no matter how much that party is at fault.

Therefore, the title must be amended to make these changes because otherwise the title would not "correctly and fairly express the true intent and meaning" of the measure. *See* C.R.S. § 1-40-106(3)(b). Indeed, Title Board's "duty is to ensure that the title, ballot title and submission clause, and summary fairly reflect the proposed initiative so that petition signers and voters will not be misled into support for or against a proposition by reason of the words employed by the board." *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)).

CONCLUSION

Accordingly, the Objectors respectfully request that a rehearing is set pursuant to C.R.S. § 1-40-107(1) and that the Title Board grant this Motion.

Respectfully submitted this 22nd day of April 2026.

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