IN RE: TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE FOR INITIATIVE 2025 -2026 #312 ("COST OF NATURAL GAS PIPELINE EXTENSIONS")

Initiative Proponents: Sidra Aghababian and Jessica Arhontoulis

&

Objector: Edward Andrew Leighty

MOTION FOR REHEARING

By undersigned counsel, Edward Andrew Leighty, a registered voter of the County of Arapahoe, objects to the titles set for Initiative #312, pursuant to C.R.S. § 1-40-107(1)(a)(I).

On April 15, 2026, the Title Board set the following ballot title and submission clause for Initiative #312:

> *Shall there be an amendment to the Colorado Constitution prohibiting utilities from raising utility bill rates of existing customers to pay for any costs associated with extending a natural gas pipeline to serve new customers or later removing or retiring the extended pipeline?*

I. The Title Board lacks jurisdiction to set a ballot title for Initiative #312.

A. The Board lacks jurisdiction to set a ballot title for Initiative #312 because it violates the single subject requirement.

The purpose of #312 is to limit the billing practice of utilities. It provides: "Utilities shall not raise utility bill rates …" The measure, in other words, serves a consumer protection function.

Yet, without telling voters, the measure re-calibrates the constitutional authority conferred on state and local governments. Specifically, the Constitution establishes the state Public Utilities Commission ("PUC"), and, subject to state statute, it grants the PUC regulatory authority over utility rates:

> In addition to the powers now vested in the General Assembly of the State of Colorado, ***all power to regulate the facilities, service and rates and charges therefor***, including facilities and service and rates and charges therefor within home rule cities and home rule towns, of every corporation, individual, or

> association of individuals, wheresoever situate or operating within the State of Colorado, whether within or without a home rule city or home rule town, as a public utility, as presently or as may hereafter be defined as a public utility by the laws of the State of Colorado, ***is hereby vested in such agency of the State of Colorado as the General Assembly shall by law designate***.
>
> Until such time as the General Assembly may otherwise designate, said authority shall be vested in the Public Utilities Commission of the State of Colorado …

Colo. Const. Art. XXV (emphasis added)[1]; *see also* C.R.S. § 40-3-102; *Colo.-Ute Electr. Assoc. v. Pub. Utils. Comm'n*, 760 P.2d 627, 638 (Colo. 1988) ("The setting of 'just and reasonable rates,' both as to level and design, goes to the very essence of the Commission's duties under the public utilities law."). As the Supreme Court has explained, this constitutional provision fulfills a consumer protection role. "The PUC's regulatory powers and duties are aimed primarily at the protection of consumers who have little or no choice in the selection of their provider because the utility enjoys monopoly status." *CF&I Steel, L.P. v. PUC*, 949 P.2d 577, 584 (Colo. 1997).

The Constitution, in turn, exempts municipal-owned utilities from the PUC's jurisdiction:

> … and provided, further, that nothing herein shall be construed to apply to municipally owned utilities.

Colo. Const. Art. XXV. The exemption exists because municipally owned utilities are subject to electoral accountability through municipal officials.

> The rationale of Article XXV and City and *County of Denver v. PUC, supra*, is that when a municipally owned utility operates within the municipality, there is no one who needs the protections of the PUC. The electorate of the City exercises ultimate power and control over the City-run utility and if the people of the City are in any way dissatisfied with the operation of the utility, they may demonstrate their discontents at the next municipal election.

K. C. Electr. Asso. v. Pub. Utils. Comm'n, 191 Colo. 96, 100 (Colo. 1976). And the General Assembly has exercised its constitutional authority to allow cooperative electric associations to be exempt from PUC authority, as it "may be duplicative of the self-regulation by the association and may be neither necessary nor cost-effective." C.R.S. § 40-9.5-101. These associations, like municipally owned facilities, do not require PUC oversight, as they "are owned by the member-consumers they serve [and] are regulated by the member-consumers themselves acting through an elected governing body." *Id.*

Thus, while Initiative #312 presents itself as a matter to regulate what utilities do, it in fact changes the constitutional distribution of authority for regulating utility rates. The PUC no longer has the authority to address how to account for gas pipeline expansion as part of an approved rate. And the electors of a municipality with a municipally owned utility are now

[1] Curiously, Proponents did not place their measure in the article addressing utilities rate setting.

deprived of their democratic control over their utility rates. Members of an electric cooperative similarly lose their right of self-management over this aspect of rate setting.

This is the type of mixing of a substantive legal change with a surreptitious alteration in government authority has been held to violate the single subject requirement. As the Supreme Court has explained, it has reversed the Board in "setting titles for initiatives affecting substantial rearrangement of existing governmental powers." *In re the Title, Ballot Title and Submission Clause for 2009-2010 # 91*, 235 P.3d 1071, 1080 (Colo. 2010) (combination of new beverage tax with alteration of General Assembly's constitutional authority over state agency violated the single subject requirement). Similarly, in addition to rejecting the combo beverage tax-legislative power restriction in *#91*, the Court has found a single subject violation in changing judicial qualifications and authority over judges. *In re Title, Ballot Title and Submission Clause, and Summary for 1997-1998 # 64*, 960 P.2d 1192, 1198 (Colo. 1998) (measure's provisions on judicial qualifications separate from provision with the "purpose of reallocating governmental authority and control" over Denver county court judges, as was provision "divest[ing] the Commission of its investigatory and remedial powers"). Like *#91* and *#64*, Initiative #312 impermissibly mixes a substantive legal change with a "rearrangement" of existing governmental powers. It is especially troubling that this change in regulatory authority is not obvious to voters—it is the kind of "subterfuge" the single subject requirement avoids. *2009-2010 # 91*, 235 P.3d at 1079.

II. The ballot title is misleading, unfair, and inaccurate.

Initiative #312 includes an unusual "applicability" provision. Instead of a generally applicable date on which the measure becomes effective, the proponents drafted a "contingent" effective date provision. The measure provides: "This measure applies to conduct occurring or contracts entered into on or after the effective date of this measure."

As an initial matter, it is unclear how this provision applies at all. For utilities regulated by the PUC, rates are effective upon the PUC approving a rate—in other words, there is no "conduct or contract" to trigger a rate. Similarly, municipally owned utilities are not setting rates by some "conduct or contract" but, instead, set rates as provided for by city charters, regulations, and municipal utility rules and/or hearing processes. And electric cooperatives set rates via their elected leadership, not "conduct or contract." Given that "conduct or contract" is not the basis for rate setting, it is unclear how this measure operates. Under such circumstances, the Board should not even set a title. Where the Board cannot identify how a measure's key features will operate, it is unable to identify the measure's single subject and lacks jurisdiction over the initiative. *In re Title, Ballot Title and Submission Clause, and Summary for Initiative 1999-2000 #25*, 974 P.2d 458, 468-49 (Colo. 1999).

To the extent that the Board can understand the "applicability" clause such that it can describe it in the title, the Board needs to do so. Voters need to understand that this measure does not apply at the same time across the state—in other words, when and if the prohibition in Initiative #312 kicks in depends upon some triggering "conduct or contract" event that will differ across utility customers. Those events occurring in one location could vary ***drastically*** from another locale. For example, if what proponents intend to mean is to have applicability tied to a

franchise agreement, such agreements can have decades-long effective dates. This prohibition could kick in 2027 for Municipality A that enters a new franchise agreement just after the measure passes, but not until the mid-to-late 2030 or later for Municipality B that reauthorized a franchise just before voters pass the measure.

Utility consumers will be treated differently across the state, and many may think this measure will give them some immediate rate relief when it won't (and may not for ***years***). Letting them think so is misleading. The title needs to explain the applicability provision to avoid misleading voters and avoid being a title where "the general understanding of the effect of a 'yes/for' or 'no/against' vote will be unclear." C.R.S. § 1-40-106(3)(b).

WHEREFORE, in light of the arguments and legal precedent cited above, the Title Board should dismiss Initiative #312 for lack of jurisdiction, and if it does not do so, it should revise the titles so that they are fair, accurate, and not misleading.

RESPECTFULLY SUBMITTED this 22nd day of April, 2026.

RECHT KORNFELD, P.C.

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CERTIFICATE OF SERVICE

I, Erin Mohr, hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2025 -2026 #312** was sent this day, April 22, 2026, via email to counsel for the proponents at:

Martha Tierney
Counsel for proponents

Kyle Holter
Assistant Attorney General

s/ Erin Mohr