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**COLORADO TITLE SETTING BOARD**

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**IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION  
CLAUSE FOR INITIATIVE 2025-2026 #313**

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**MOTION FOR REHEARING**

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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 #313 (“Initiative #313”) 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 a title because Initiative #313 is unclear on its face; and (2) the title set for the proposed measure fails to accurately describe the measure and would mislead voters.

**I. THE TITLE BOARD LACKS JURISDICTION TO SET TITLE ON INITIATIVE #313  
BECAUSE IT IS SO UNCLEAR AND CONFUSING.**

First, and most importantly, the Title Board lacks jurisdiction to set title on Initiative #313 because the measure is, on its face, unclear and confusing. The Colorado Constitution mandates that an initiative’s single subject “shall be clearly expressed in its title.” *In re Title, Ballot Title and Submission Clause for 2015-2016 #73*, 369 P.3d 565, 568 (Colo. 2016). The clear title standard requires that the title “allow voters, whether or not they are familiar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose the proposal.” *Id.* Title Board must consider the confusion that may arise from a misleading title and set titles that “correctly and fairly express the true intent and meaning” of a measure. *Id.* (quoting C.R.S. § 1-40-106(3)(b)). Based on these principles, if an initiative is so vague, confusing, or unclear that its true purpose cannot be understood, then the Title Board lacks jurisdiction to set a title. The Title Board has declined to set a title on this ground in the past, and it should similarly refrain from doing so here.

The purpose of Initiative #313, as reflected in the review and comment memorandum, is “to require an operator, owner, or producer to be held strictly liable for any damages, including personal injury, property damage, and environmental harm, resulting from oil and gas operations.” The amended measure, as submitted to Title Board, added an applicability clause limiting the measure’s effect to “conduct occurring on or after the effective date of the measure.” The

purpose of the measure and the applicability clause, applying the measure to “conduct” occurring after the effective date, are inherently incongruous.

“Conduct” is commonly defined as “the act, manner, or process of carrying on.”<sup>[1]</sup> “Strict liability,” on the other hand, is defined as “liability based on causation alone, without any other limiting factors,” or “liability without fault.”<sup>[2]</sup> Thus, a strict liability construct is not targeted at conduct. Instead, in attributing liability, it focuses only on the origin of the damage. Tying applicability to the term “conduct” is therefore inherently opposed to the negligence concept of strict liability.

For example, under the federal Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), an operator or owner of a property is strictly liable for any contamination on its property regardless of when the contamination occurred. *See* 42 U.S.C. § 9607. The liability is tied directly to the fact that the contamination *occurred*, and not the *conduct* that caused the contamination. This liability extends to any historical owner of the property in the chain of title. For Initiative #313, however, it is not clear whether the same scope of liability is intended here. Does “conduct” apply to “damages” or to “oil and gas operations”? Or to both? And how does one determine the source of the contamination or damages to assign liability? At many oil and gas sites, it will be unclear exactly when pollutants or contamination originated or what events caused them. Where does Initiative #313 draw the line?

Moreover, depending on the answers to the questions posed above, Initiative #313 could be retroactive and/or implicate prior owners. If this is the case, then the measure implicates the same constitutional issues identified in the review and comment memorandum, *see* COLO. CONST., art. II § 11. The significant uncertainty detailed above means that this Title Board must refrain from setting title. *See In re 2015-2016 #73*, 369 P.3d at 568.

## **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, and that the measure does not impermissibly contain multiple subjects, setting a title for Initiative #313 is problematic for at least three reasons. The draft title approved at the April 15<sup>th</sup> hearing must be amended so that the title fully and accurately captures the measure’s central features and does not mislead voters.

First, depending on the answers to the above questions, the title must make clear that the measure does not apply retroactively. Currently, the title for Initiative #313 is as follows: “A change to the Colorado Revised Statutes holding any oil and gas operator, owner, or producer strictly liable for any damages,

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<sup>[1]</sup> Conduct, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/conduct>.

<sup>[2]</sup> Liability, BLACK’S LAW DICTIONARY (12th ed. 2024).

including personal injury, property damage, or environmental harm, resulting from their oil and gas operations without regard to fault, negligence, or intent.” From the text of the title, voters may assume that operators, owners, or producers can be held strictly liable for *past* operations. But the measure may apply only to “conduct” occurring *after* the effective date of the measure. The addition of the following language would make the effect of the measure clearer and lead to less voter confusion: “...resulting from their ***current and future*** oil and gas operations....”

As previously discussed above, the omission of this aspect of the measure is significant, as strict liability in the related CERCLA context includes any *historical* operations that may have impacted the environment. However, Initiative #313 may not apply to historical operations. Thus, the title must make this distinction clear so that voters understand the true scope of the measure.

Second, the inclusion of “without regard to fault, negligence, or intent” in the title will lead to voter confusion. It is unclear from the title’s text whether “without regard to fault, negligence, or intent” is in reference to strict liability or is meant to articulate a standard different than strict liability. Voter confusion could be reduced by simply moving “without regard to fault, negligence, or intent” up higher in the title, in a way akin to the following: “A change to the Colorado Revised Statutes holding any oil and gas operator, owner, or producer strictly liable, ***without regard to fault, negligence, or intent***, for any damages, including personal injury, property damage, or environmental harm, resulting from their oil and gas operations ~~without regard to fault, negligence, or intent~~.”

Third, the title is also inadequate because it leaves ambiguous what types of events trigger strict liability under the measure, as referenced in Section I above. The title for Initiative #313 refers to harm “resulting from their oil and gas operations” but the measure’s text refers also to “conduct occurring on or after the effective date of this measure.” Does this mean an operator who discovers pollution or contamination after the effective date, but which came from prior operations before its ownership is not liable under the measure? Or what about environmental harm that the operator caused which occurred before the effective date but did not result from “conduct” occurring after the effective date? The title’s reference only to “operations” and failure to address what “conduct” is results in a misleading and unclear title.

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.

/s/ David B. Meschke

Jason R. Dunn  
David B. Meschke  
Reilly E. Meyer  
Xander B. Bienstock  
Brownstein Hyatt Farber Schreck LLP  
675 15th Street, Suite 2900  
Denver, Colorado 80202  
(303) 223-1100  
jdunn@bhfs.com; dmeschke@bhfs.com;  
rmeyer@bhfs.com; xbienstock@bhfs.com  
*Attorneys for Objectors Lynn Granger and  
Carly West*

Addresses of Objectors (provided under separate cover):

Lynn Granger and Carly West  
c/o Brownstein Hyatt Farber Schreck, LLP  
675 15th Street  
Suite 2900  
Denver, CO 80202  
303-223-1219