

**BEFORE THE COLORADO BALLOT TITLE SETTING BOARD**

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Jamie Gentry-Cunningham, Jenna Lea Candraia Clinchard,  
Jude Kacey Clinchard, Iris Halpern and Dr. Lora Melnicoe,  
Objectors,

v.

Darcy Schoening and Wayne Goodall,  
Proponents of Initiative 2023-2024 #175.

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**Motion to Dismiss Second Title Board Consideration of Initiative #175  
For Want of Jurisdiction**

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Through their legal counsel, Jamie Gentry-Cunningham, Jenna Lea Candraia Clinchard, and Jude Kacey Clinchard, registered electors of Boulder County, and Iris Halpern and Dr. Lora Melnicoe, registered electors of Denver County, hereby file this motion to dismiss the Title Board’s second consideration of Initiative 2023-2024 #175.

On April 5, 2024, Proponents refiled their measure where title setting had been denied, due to the measure’s violation of the single subject requirement at the Title Board meeting of April 3, 2024. The Title Board lacks jurisdiction to reconsider Initiative #175 for the following reasons.

- I. The Constitution allows Proponents to strike additional subjects from their measure *before* they submit to Title Board, not after their measure has been found to violate the single subject requirement.**

Section 1(5.5) of Article V of the Colorado Constitution requires a matter to consist of only one subject. Proponents who go through the Review and Comment process may revise their measure without resubmitting to the legislative offices but only if they do so *before* they file a measure for title setting with the Title Board.

(5.5) No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title;... **the measure may be revised and resubmitted for the fixing of a proper title without the necessity of review and comment on the revised measure** in accordance with subsection (5) of this section, unless the revisions involve more than the elimination of provisions to achieve a single subject, or unless the official or officials responsible for the fixing of a title determine that the revisions are so substantial that such review and comment is in the public interest.

Proponents are too late to cure their single subject violation. Notably, the rehearing in this matter was originally scheduled for March 20. Had Proponents appeared for this rehearing, they

would have had time to resubmit to the legislative offices. Here, their timing issue is attributable solely to their choice to delay their rehearing.

Therefore, the Board must reject this refiling.

**II. These changes are so substantial that they required resubmission to the legislative office.**

While Proponents have some latitude to timely strike portions of their measure, the changes they have made to Initiative #175 significantly revise who is subject to the measure and what liability attaches for acts that would violate the measure. Any such change is a dramatic alteration to the scope and effect of this initiative.

Any Title Board filing that is “substantially different from the intent and meaning of the central features of an earlier version thereof that was submitted to the legislative offices” violates the constitutional requirement that Proponents first submit their measure for legislative staff review. *In re Title, Ballot Title & Submission Clause, and Summary for Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the Town of Idaho Springs*, 830 P.2d 963, 968 (Colo. 1992). This includes changes to “the applicability” of key elements of the initiative. *Id.* That is precisely what Proponents have changed here—the persons who have a cause of action and the persons against whom such cause of action may be lodged.

For this reason, too, the Board has no jurisdiction to reconsider this measure.

**III. No resubmission is permitted where the refiled measure does not accurately reflect changes made in the amended version.**

Proponents who file for title setting must do so with accuracy. Where proponents omit key elements of the measure in their amended and/or final versions, the Title Board may not consider the resubmission for title setting.

Section 12-30-123(7)(b) of the original Initiative #175 imposed liability on health care providers “irrespective of whether the medical procedure was performed, provided, administered, or attempted with the intent to cause the change.”<sup>1</sup> The redlined version of the resubmitted Initiative #175<sup>2</sup> does not contain this language or show this change. In fact, in the resubmitted version, subsection (7)(b) is the language from the original (7)(c).

In *In re Title, Ballot Title & Submission Clause, and Summary for 1997-1998 #109*, 962 P.2d 252 (Colo. 1998), Proponents submitted first, second, and third drafts of their measure but filed to include subsection (10) in their last draft. The Title Board refused to set a title for

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<sup>1</sup> <https://www.coloradosos.gov/pubs/elections/Initiatives/titleBoard/filings/2023-2024/175OriginalRefiled.pdf>

<sup>2</sup> <https://www.coloradosos.gov/pubs/elections/Initiatives/titleBoard/filings/2023-2024/175AmendedRefiled.pdf>

proponents' failure to comply with C.R.S. § 1-40-105(4), and the Supreme Court affirmed the Board's decision. That statute authorizes title setting for measures where an original, an amended, and a final draft have been timely filed.

As it relates here, Proponents must provide to the Board "a copy of the amended draft **with changes highlighted or otherwise indicated**, if any amendments were made following the last review and comment meeting conducted." *Id.* In one significant regard, they failed to do so. Thus, the Title Board must reject this refiling.

**IV. The Title Board lacked jurisdiction because each measure is subject to one motion for rehearing, and Initiative #175 has completed that step.**

The Colorado Supreme Court has ruled "a proposed initiative is subject to only one rehearing proceeding before the Title Board." *In the Matter of the Title, Ballot Title and Submission Clause for 2019-2020 #74*, 2020 CO 5, ¶ 26, 455 P.3d 759, 765. A timely motion for rehearing was filed on March 10, and that rehearing occurred on April 3, 2024.

If the Board were to consider the refiled Initiative #175, and given the Court's ruling in #74, this refiling would not be subject to a rehearing to test the single subject decision of the Board or the clarity of any title set. This is a statutory right of all registered voters in the state, C.R.S. § 1-40-107(1)(a)(I), and it cannot be abridged by an initiative's proponents.

Therefore, the Board must not consider the refiled Initiative #175.

Respectfully submitted this 11th day of April, 2024.

RECHT KORNFELD, P.C.

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**CERTIFICATE OF SERVICE**

I hereby affirm that a true and accurate copy of the **Motion to Dismiss Second Title Board Consideration of Initiative #175 For Want of Jurisdiction** was sent this day, the 11th day of April, 2024, via first-class mail, postage paid to:

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*s/ Erin Mohr*  
Erin Mohr