

COLORADO TITLE SETTING BOARD

**IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR PROPOSED INITIATIVE 2025-2026 #12**

MOTION FOR REHEARING ON PROPOSED INITIATIVE 2025-2026 #12

On behalf of Dennis Dougherty, registered elector of the State of Colorado, the undersigned counsel hereby submits to the Title Board this Motion for Rehearing on Proposed Initiative 2025-2026 #12 (“Initiative #12”) and as grounds therefore state as follows:

I. THE TITLE SET BY TITLE BOARD AT FEBRUARY 19, 2025 HEARING

On February 19, 2025, the Title Board set the following ballot title and submission clause for Initiative #12:

An amendment to the Colorado Constitution concerning labor organization affiliation, and, in connection therewith, prohibiting an employer from requiring any employee to join, resign, or refrain from joining a labor organization, or paying dues or any financial support to a labor organization or its affiliates unless authorized by the employee; and creating a new definition of labor organization for the purposes of this section.

II. GROUND FOR REHEARING**A. The Title Board Lacks Jurisdiction to Set a Title Because the Initiative Impermissibly Contains Several Separate and Distinct Subjects in Violation of the Single Subject Requirement.**

Pursuant to Colo. Const. art. V, §1(5.5),

no measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls.

See also 1-40-106.5, C.R.S. “[T]he Board may not set the titles of a proposed Initiative, or submit it to the voters, if the Initiative contains multiple subjects.” *Aisenberg v. Campbell (In re Title, Ballot Title & Submission Clause 1990-2000 #104)*, 987 P.2d 249, 253 (Colo. 2000).

The single subject requirement serves two functions. First, the single subject requirement “is intended to ensure that each proposal depends upon its own merits for passage.” *Johnson v.*

Curry (In re Title, Ballot Title & Submission Clause for 2015-2016 #132), 2016 CO 55, 13.

Second – and as pertinent here – the single subject requirement is intended to “prevent surprise and fraud from being practiced upon voters caused by the inadvertent passage of a surreptitious provision ‘coiled up in the folds’ of a complex initiative.” *Id.*, at 14. “If an initiative advances separate and distinct purposes, the fact that they both relate to the same general concept or subject is insufficient to satisfy the single subject requirement.” *Id.*, at 16.

Initiative #12 contains more than one subject in violation of article V, section 1(5.5) of the Colorado Constitution, and section 1-40-106.5, C.R.S. When carefully considered, the breadth and reach of Initiative #12 extends far beyond what the proponents contend. The proponents contend that the single subject of the measure is “protecting a worker’s right not to join a labor union.”¹ The measure, however, broadly applies to many organizations beyond a labor union. Indeed, the measure redefines “labor organization” as follows:

(5) AS USED IN THIS SECTION, “LABOR ORGANIZATION” MEANS:

(a) ANY ORGANIZATION OF ANY KIND, OR AGENCY OR EMPLOYEE REPRESENTATION COMMITTEE OR UNION, THAT EXISTS FOR THE PURPOSE, IN WHOLE OR IN PART, OF DEALING WITH EMPLOYERS CONCERNING WAGES, RATES OF PAY, HOURS OF WORK, OTHER CONDITIONS OF EMPLOYMENT, OR OTHER FORMS OF COMPENSATION;

(b) ANY ORGANIZATION THAT EXISTS FOR THE PURPOSE OF COLLECTIVE BARGAINING OR FOR DEALING WITH EMPLOYERS CONCERNING GRIEVANCES; OR

(c) ANY ORGANIZATION PROVIDING OTHER MUTUAL AID OR PROTECTION IN CONNECTION WITH EMPLOYMENT.

The language in section (5)(c) extends far beyond what is a customary labor union. For example, that language could capture bar associations, which law firms often require their attorneys to join, and which aid and protect lawyers in keeping their license by offering continuing legal education courses and creating opportunities for career advancement through specialty bar committees and networking opportunities. Other examples of organizations that would be covered by section (5)(c) are medical associations that negotiate rates and insurance reimbursements for physicians they employ, and nonprofit law firms, such as Colorado’s Towards Justice, that represent workers in litigation and other advocacy to protect their jobs and rectify the imbalance of power between workers and corporations. These are just a few of the many examples of organizations covered under the language of section (5)(c) of the measure.

Each of these different types of organizations is captured in a measure that at first read would appear, and the proponents state that it is their intent, only to apply to labor unions or labor unions by another name in the future.² This is the classic “coiled up in the folds” scenario whereby the voting public will be affirmatively surprised to learn that the measure will bar employers from requiring employee participation with not just labor unions but a whole host of

¹ [Title Board - February 19, 2025 10:00 A.M.](#), 43:47-43:57.

² [Title Board - February 19, 2025 10:00 A.M.](#), 46:42-48:07.

other associations that benefit workers. *See, e.g., Johnson*, 2016 CO 55, 14; *In re Title & Ballot Title & Submission Clause for Initiative 2001-2002 #43*, 46 P.3d 438, 446 (Colo. 2002).

The purpose of the single subject requirement is to “obviate the risk of ‘uninformed voting caused by items concealed within a lengthy or complex proposal’” 46 P.3d at 442. While the Initiative is not long, a measure can be “complex” without necessarily being “lengthy” – indeed a short and seemingly simple initiative, directed to a large and moderately complex body of law, can harbor the most pernicious surprises “coiled up in [its] folds.” Here, Initiative #12 brings all these dangers.

B. The Ballot Title and Submission Clause Is Misleading and Does Not Correctly and Fairly Express Its True Intent and Meaning.

The title of the Initiative is misleading and does not correctly and fairly express the initiative’s true intent and meaning. Section 1-40-106(3)(b), C.R.S. provides:

In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a "yes" or "no" vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly express the true intent and meaning thereof, together with the ballot title and submission clause. . . .

Titles and submission clauses should "enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal." *In re Title, Ballot Title & Submission Clause for Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 242 (Colo. 1990). The purpose of reviewing an initiative title for clarity parallels that of the single-subject requirement: voter protection through reasonably ascertainable expression of the initiative's purpose. *See id.*

The Title for Initiative #12 reads as though it applies only to labor unions and does not apprise voters of the expansive reach of the measure based on the new definition of labor organization. It is not sufficient to tell the voter that the measure redefines “labor organization.” Instead, the Title should explain to voters what the new definition states, and how it changes the status quo by capturing entities that do not traditionally fall within the meaning of “labor organization.” Here, the title for Initiative #12 is one for which the general understanding of the effect of a "yes" or "no" vote will be unclear. See generally 1-40-106(3)(b). As a result, the title for Initiative #12 does not enable voters to make an informed choice because it does not correctly and fairly express its true intent and meaning.

III. CONCLUSION

Based on the foregoing, Dennis Dougherty requests a rehearing of the Title Board for Initiative 2025-2026 #12, because the initiative contains multiple subjects, the title is unclear and misleading to voters, and it fails to fairly express the initiative’s true meaning and intent. As a result, the Title Board lacks jurisdiction to set a title and should reject the measure in its entirety.

Respectfully submitted this 26th day of February, 2025.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 26th day of February 2025, a true and correct copy of **MOTION FOR REHEARING ON PROPOSED INITIATIVE 2025-2026 #12** was filed and served on Proponents Jon Caldara and Nash Herman, via email to their counsel of record as follows:

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