

Opposition to Motion for Rehearing for Initiative 2025-2026 #149

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INTRODUCTION

The Motion for Rehearing repackages policy disagreements with the proposal into titling objections the law does not recognize.

The initiative advances one straightforward objective: to establish a constitutional right to continue living from the moment of conception.

Every provision in the measure—definitions, enforcement mechanics, and the instruction that the new right controls over contrary law—serves that single aim. That is enough under Colorado’s well-settled single-subject jurisprudence.

The Motion’s remaining claims (about “implied repeal,” title clarity, and alleged “structural” side effects) are either legally immaterial at the title-setting stage or rely on misread authority. The rehearing should be denied.

STANDARD

At rehearing, the question is not whether opponents prefer different policy, drafting, or scope. The Title Board’s task is narrow: determine whether the measure embraces one general subject and whether the titles fairly and succinctly capture its central features so voters understand the choice before them. Ambiguities in future application, policy forecasts, and merits-level constitutional debates are not resolved by the Board and are not grounds to undo titles.

ARGUMENT

I. The initiative contains a single subject: establishing a constitutional right to continue living from conception.

Colorado’s single-subject test asks whether all parts of a proposal are “necessarily and properly connected” to one general objective. This proposal’s objective could not be more direct: create a constitutional right to continue living from conception. The supporting provisions are implementation details:

- The right’s operative definition (who/what it protects, when it attaches);

- The direction that contrary authority yields to the new right (supersession/priority language); and
- Routine enforcement scaffolding to make the right judicially cognizable.

Courts have repeatedly rejected the notion that a measure becomes multi-subject merely because it displaces existing law.¹ To the contrary, the Court has recognized that even repealing existing constitutional text may be accomplished within a single subject when the repeal is the vehicle for the one overarching objective. If an express repeal can be one subject, then a conflict-of-laws clause (or the inevitable implied supersession that flows from a new, higher-order right) is doubly within the single-subject lane. The Motion’s attempt to transform ordinary consequences of constitutional priority into a “second subject” is contrary to that principle.

A. “Implied repeal” is a consequence, not a subject.

Opponents lean on “implied repeal” as if the phrase were talismanic. It is not. Whether existing provisions are superseded is a law-of-conflicts outcome that follows from adopting a higher, later-in-time constitutional rule. Colorado cases on implied repeal (like *Ferch*) speak to interpretive canons—they tell courts to avoid finding repeal unless there is an irreconcilable conflict. They do not convert the existence of a conflict into a separate subject. The subject remains what the initiative declares: a right to continue living from conception. That this right will—by design—control over inconsistent provisions does not add a second topic; it enforces the first.

B. The Motion’s reliance on the “Denver courts” line is misplaced.

¹ The Colorado Supreme Court has made clear that the mere repeal or displacement of existing constitutional or statutory provisions does not, by itself, render a measure multi-subject. In *In re Ballot Title #3*, 19SA25 (Colo. 2019), the Court held that an initiative seeking to repeal the Taxpayer’s Bill of Rights (TABOR) in its entirety satisfied the single-subject requirement, expressly disapproving earlier dicta suggesting that a repeal of a multi-subject constitutional provision necessarily constitutes multiple subjects. *Id.* at ¶¶ 30–39 (“[W]e reject the notion that an initiative that asks voters the single question of whether a constitutional provision should be repealed violates the single-subject requirement simply because the underlying provision contains multiple subjects.”). Likewise, in *In re Title, Ballot Title & Submission Clause for 2013-2014 Initiative #89*, 328 P.3d 172 (Colo. 2014), the Court upheld a measure that altered existing constitutional and statutory provisions to create a new “right to Colorado’s environment,” concluding that all provisions of the initiative were “necessarily and properly connected” to that single objective. *Id.* at 177. These cases confirm that a measure does not become multi-subject merely because it displaces or repeals existing law; the inquiry turns instead on whether the initiative’s components are connected to a single unifying purpose.

Opponents invoke older decisions where a proposal both altered a discrete institutional arrangement and pursued unrelated ends; the Court found multiple subjects because the measure yoked together incongruous projects. Here, by contrast, there is a single project: constitutionalizing a specific right and making it effective. The priority/supersession language is not some freestanding institutional redesign; it is the familiar clause that ensures the newly created constitutional right governs. Colorado case law has since underscored that breadth, impact, or controversy do not create a second subject where all parts serve one end.

II. The Motion's title-clarity objections fail; the titles fairly present the measure's central features.

Titles must be clear and not misleading, but they need not catalog every downstream implication, litigating every hypothetical application (end-of-life care, IVF, standards of proof, etc.). The adopted titles meet the standard:

1. They accurately state the measure's core change—enshrining a right to continue living from conception.
2. They alert voters to the priority of the right over inconsistent law by summarizing that the measure supersedes contrary provisions and decisions.
3. They avoid argumentative or speculative phrasing while fairly expressing the measure's thrust so electors can decide whether they favor or oppose that constitutional change.

Opponents say the Board “cannot comprehend” the initiative's scope because it may affect multiple legal domains. That argument confuses policy breadth with title ambiguity. Many single-subject initiatives have broad consequences—tax limits, criminal-procedure reforms, energy or election changes—that ripple across statutes and case law. That does not make them unclear; it means voters are being asked to approve a consequential constitutional rule. The proper remedy for genuine textual uncertainty is future judicial construction, not withholding titles.

A. The Board was not required to enumerate every potentially affected doctrine.

A title is not a treatise. Colorado decisions repeatedly caution against over-stuffed titles that mislead through prolixity. The Motion demands a laundry list: end-of-life standards, medical licensing, damages regimes, agency mandates, and more. That is precisely what the Court discourages. A faithful summary of the central feature is enough. Voters will understand that a constitutional right of this nature will

supersede contrary law; that recognition does not hinge on reciting an exhaustive inventory of conflicts.

B. The “structural change” label does not transform implementation into a second subject.

Opponents argue the measure “curtails judicial power” by stating the right controls over conflicting judgments. That clause does not strip courts of power; it directs courts on the substantive rule they must apply—just as every constitutional amendment does. Courts will continue to adjudicate controversies; they will simply apply the new constitutional standard where it governs. That is an implementation mechanism, not a separate structural objective.

III. The Motion’s parade of hypotheticals is legally irrelevant at the title stage.

The Motion leans on speculative applications (e.g., medical protocols, agency rules, private civil liabilities). Colorado law draws a bright line: the Title Board does not resolve hypothetical effects or future statutory harmonization. The initiative states a constitutional rule; how that rule interacts with specific statutes and fact patterns is for subsequent litigation and legislation. Using conjectural outcomes to manufacture a “multiple-subjects” or “unclear title” problem invites the Board to do precisely what it may not—adjudicate merits disputes in a titling rehearing.

IV. Even taking the Motion’s premises at face value, the requested relief is improper.

At rehearing, opponents must identify a specific, material title defect the Board can correct. They do not. Their complaint is that the measure is too impactful—that it may prevail over existing guarantees the opponents prefer. But policy disagreement and constitutional hierarchy are not titling errors. If the Board were to burden titles with every contested characterization opponents propose, the titles would become argumentative and unworkable. The concise, neutral titles the Board adopted are the correct approach.

CONCLUSION

This initiative presents one subject—recognition of a constitutional right to continue living from conception—and the titles fairly, succinctly inform voters of that choice, including that the right will control over contrary law. “Implied repeal” is neither a second subject nor a titling defect; it is the ordinary legal consequence

of elevating a new constitutional rule. The Motion asks the Board to convert merits-level debates and speculative applications into title-setting barriers. Colorado law forbids that.

The rehearing should be denied.