

**IN RE: TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE
FOR INITIATIVE 2025-2026 #110
("Prohibiting Certain Surgeries on Minors")**

Initiative Proponents: Erin Lee & Michele Austin

v.

Objector: Rogena Sue Johnson

MOTION FOR REHEARING

By undersigned counsel, Rogena Sue Johnson, a registered voter of Larimer County, objects to the titles set for Initiative #110, pursuant to C.R.S. § 1-40-107(1)(a)(I).

On August 6, 2025, the Title Board set the following ballot title and submission clause for Initiative #110:

Shall there be a change to the Colorado Revised Statutes creating new law prohibiting surgery on a minor for the purpose of altering the minor's biological sex characteristics, and, in connection therewith, prohibiting any health-care professional or other person from knowingly performing, prescribing, administering, or providing any surgery to a minor for the purpose of altering the minor's biological sex characteristics and prohibiting the use of state or federal funds, Medicaid reimbursement, or insurance coverage to pay for this type of surgery?

In so doing, the Board erred for the following reasons.

I. The Title Board lacks jurisdiction to set a ballot title for Initiative #110.

A. The Proponents of Initiative #110 were functionally absent at their Review and Comment hearing, refusing to state their measure's single subject, and thus the Board lacks jurisdiction to set a title.

C.R.S. § 1-40-105 governs the requirements for review and comment hearings before legislative staff. Subsection (1.5) of that statute provides: "Both designated representatives of the proponents must **appear** at all review and comment meetings. If either designated representative fails to **attend** a meeting, the measure is considered withdrawn by the proponents." (Emphasis added.)

It is fundamental that when the legislature uses different terms in the same statute, they are presumed to have different meanings. “[T]he use of different terms signals an intent on the part of the General Assembly to afford those terms different meanings. And we may not construe a statute so as to render any statutory words or phrases superfluous.” *People v. Rediger*, 2018 CO 32, ¶22 (citations and internal quotation marks omitted).

A person “attends” a meeting simply by showing up. “Attend” means ‘to be present at; to go to’” as in “to attend a meeting.” *Attend*, Merriam-Webster Dictionary, <https://perma.cc/TLZ8-3UXZ> (last viewed on August 13, 2025), cited by *Henck v. Sombrero Stables, LLC*, 2023 Colo. App. LEXIS 3047, ¶43.

In contrast, a person “appears” at a meeting only by actually engaging with the public body conducting the hearing. In construing “appear,” “the decisions of Colorado courts have uniformly relied on the defendant’s communication with the court.” *Plaza del Lago Townhomes Ass’n v. Highwood Builders, LL*, 148 P.3d 367, 371 (Colo. App. 2006) (citations omitted). This is not merely a “technical concept;” instead, if a party must “appear, then “communication with the court is required.” *Id.*

Here, the designated representatives, through counsel, refused to communicate on a fundamental issue asked of all initiative proponents. Legislative staff asked them to state the single subject of their initiative. “Article V, section 1 (5.5) of the Colorado Constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?”¹ Their response was: “Respectfully, we will reserve that discussion for the Title Board.”²

It is no defense to say that the refusal to answer the question about a constitutionally mandated requirement is communication. “‘Communication’ means ‘the act or action of imparting or transmitting.’” *People v. Heywood*, 2014 COA 99, ¶28, citing Webster’s Third International Dictionary 460 (2002). Refusing to answer a question neither imports nor transmits any information. *Cf. Markwell v. Cooke*, 2021 CO 17, ¶36 (unintelligible repetition of words is not a “reading” of bills under the Constitution).

Additionally, it is no defense to say that the Board incorporated the discussion of Initiative #71 as part of the hearing on #110. That comment provided no substantive information to the public of the asserted single subject of this measure (which was different than #71) by these proponents (who were also different, at least in part, from #71). At this late point in the process, a member of the public reviewing this record would have no idea what these two individuals believe the single subject of this measure, Initiative #110, is.

¹ Colorado Legislative Council and Office of Legislative Legal Services Review and Comment Memorandum on Initiative 2025-2026 #110 at 2, <https://leg.colorado.gov/sites/default/files/initiatives/2025-2026%2520%2523110.002.pdf>.

² <https://sg001-harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20250812/72/17537> (10:18:11-24).

An initiative's single subject is a matter of constitutional import. Colo. Const. art. V, §1(5.5). As such, Proponents don't get to opt out of stating what their measure addresses because they would prefer not to be on the record or they think that it isn't timely to discuss the core purpose of their proposal.³

The review and comment hearing is intended to benefit proponents, but that is not its only goal. Voters who adopted this requirement and the courts that implement it recognize that informing the public is an equally significant priority in the review and comment process. According to the 1980 Blue Book discussion of the referred measure that opened the review and comment process to the public, "At present, very little information is available to persons signing petitions other than that provided by sponsors and circulators of the petitions. **Public disclosure from the beginning would enhance the likelihood of an informed electorate which is essential to a constructive initiative process.**" *In the Matter of the Title, Ballot Title and Submission Clause, and Summary for an Initiative Pertaining to Tax Reform*, 797 P.2d 1283, 1288 (Colo. 1990) (citation omitted) (emphasis added).

Given Proponents' failures to meet these standards, Initiative #110 was not properly filed with the Board, and as such, the Board lacks jurisdiction to set titles. "Since the proponents did not comply with the constitutionally required procedure for comments and review, the Board was without jurisdiction to set the (initiative's) title, ballot title and submission clause, and summary." *Id.* at 1288.

Therefore, the titles set for Initiative #110 are invalid, and the measure should be returned to its proponents.

B. Initiative #110's vague wording conceals a wide array of non-surgical acts and non-medical personnel that are bound by its terms, concealing from voters its breadth by references to gender affirming surgery for minors.

Initiative #110 doesn't simply prevent medical doctors who are able to perform surgery from doing so as to a portion of the populace. It applies to another dozen categories of licensed health care professionals, including:

- physical therapists,
- psychologists,
- pharmacists,
- optometrists, and
- anyone in the undefined category of "the healing arts."

³ Notably, when asked by the Title Board to state the single subject, the designated representatives failed to answer the question again, stating only the ways in which they had altered Initiative 2025-2026 #71 to arrive at the initiative text of Initiative #110. Proponents offered that this measure was "substantively identical" with "one substantive change" but the "same purpose" as Initiative #71. https://csos.granicus.com/player/clip/510?view_id=1&meta_id=18723&redirect=true (4:47:56-4:51:48). Thus, the designated representatives' "reservation" of the single subject topic "for the Title Board" was much like Godot – it never appeared.

Proposed Section 12-30-125(2)(a). Also covered by Initiative #110 are chiropractors, dentists, and podiatrists, whose involvement in this surgical process is... imaginary. Initiative #110 was drafted to also apply to health care professionals who are not licensed to practice in Colorado (and potentially have never set foot in the state), *id.*, an element coiled in Initiative #110's folds and not disclosed in the titles. Finally, #110 even applies to the still amorphous category of "other persons." Proposed Section 12-30-125(3).

Why include all of these people, most of whom are not even alleged to perform the covered surgeries? Because the measure is not limited to "performing" surgery. It also applies to any person who might "prescribe, administer, or provide" such surgery.

More importantly, the acts of prescribing, administering, and providing this surgery are not defined by the initiative. The refusal to provide this insight can be determinative in the single subject analysis. As the Supreme Court has held:

[T]his Initiative's complexity and omnibus proportions are hidden from the voter. In failing to describe non-emergency services by defining, categorizing, or identifying subjects or purposes, the Initiative fails to inform voters of the services its passage would affect.... In the absence of a definition for "services" or a description of the purposes effected by restricting non-emergency services, the additional purpose of restricting access to unrelated administrative services is hidden from the voter. Moreover, **the Initiative's failure to specify any definitions, services, effects, or purposes makes it impossible for a voter to be informed as to the consequences of his or her vote. This facial vagueness** not only complicates this court's attempt to understand the Initiative's subjects, but **results in items being concealed within a complex proposal as prohibited by the single subject rule.**

In re Title & Ballot Title & Submission Clause for Initiative 2005-2006 #55, 138 P.3d 273, 282 (Colo. 2006) (emphasis added).

Should Proponents argue that these terms need not be defined in their measure, Objector would point out, without conceding Proponents' premise, that the common definitions of these three terms, reflecting their plain meaning, make the case for the hidden expanse of #110.

- "In a medical sense '**prescribe**' means to direct, **designate**, or order use of a particular remedy, therapy, medicine, or drug." *In re Driscoll*, 179 B.R. 664, 665 (1995), citing *Black's Law Dictionary* 1064 (5th Ed. 1981) (emphasis added).
- "**Administer**" means "to manage or supervise the execution, use or conduct of" an activity and, in the medical field, "should recognize and encompass the activities of **doctors and other medical professionals who are involved in prescribing the claimed compounds or otherwise supervising the care**" of a patient. *Janssen Prods., L.P. v. Lupin Ltd.*, 2013 U.S. Dist. LEXIS 189016, *36 (D.N.J. Oct. 9, 2013) (emphasis added), citing *Merriam-Websters Dictionary* (internal quotation marks omitted).

- “‘**Provide**’ is defined as ‘To make, **procure**, or furnish for further use, **prepare**. To **supply**; to **afford**; to **contribute**.’” *Wolf Creek Ski Corp. v. Bd. of County Comm’rs*, 170 P.3d 821, 826 (Colo. App. 2007), citing *Black’s Law Dictionary* 1224 (6th Ed. 1990) (emphasis added).

Thus, a relative, friend, neighbor, or co-worker (i.e., “other person”) who informs a person about the potential for them to receive surgical gender affirming care has “prescribed” such surgery by “designating” it to that person. *Black’s Law Dictionary* 447 (6th ed. 1990) (“designate” means “To mark out and make known; to point out; to name; indicate”); *Webster’s Third New International Dictionary Unabridged* 612 (1981) (“designate” means “to make known directly”), cited by *Richardson v. C.I.R.*, 125 F.3d 551, 556 (7th Cir. 1997).

Additionally, there are no limits in #110 on who or what constitutes an “other person.” The plain meaning of “other” makes clear that there is no line drawn. See *People v. Tomaske*, 2022 COA 52, ¶21, 516 P.3d 534, 538 (“other” means “an additional one”), citing *Webster’s Third New International Dictionary* 1598 (2002).

Similarly, the initiative’s use of “treatment” in Section 1 triggers multiple subject concerns because Initiative #110 includes any person “administering” surgical care. Any health care professional who is involved in the post-operative treatment of such a patient is involved in “administering” the surgery because that person is involved in “otherwise supervising the care” of the patient. See *Janssen Prod., supra*. The physical therapist who assists the patient with recovery is implicated. So is the psychologist, mental health therapist, or psychiatrist who provides counselling before or after surgery. As is the pharmacist who oversees the dispensing of medications in advance of or after surgery.⁴ Thus, the specificity of “surgery” in the measure does not limit its reach. If that had been the proponents’ intent, they would have repeated “surgery” in Section 1. They did not. And that different language usage has legal effect.

In this regard, the Board erred by viewing “surgery” as the only substantive prohibited act in the initiative. The term “treatment” is incorporated in the definition of “altering biological sex characteristics” which applies to **all** covered surgeries. If adopted, that definition would be substantive, controlling law. *City of Colo. Springs v. Powell*, 156 P.3d 461, 466 (Colo. 2007) (changes to definitions in the Colorado Governmental Immunity Act “create[d] substantive changes to the law”). As such, it would control the acts specified in Proposed Section 12-30-125(3), thus opening the door to the reach of this measure far beyond what has been described by proponents.

⁴ According to the American Journal of Psychiatry, transgender individuals were found to “receive 3.4–3.9 times more prescriptions for antidepressants and anxiolytics than the general population, and even 10 years after gender-affirming surgeries, rates of mood and anxiety disorders remain elevated (21.1% for trans compared with 12.5% for cis people).” Mueller, S., *Mental Health Treatment Utilization in Transgender Persons: What We Know and What We Don’t Know*, The American Journal of Psychiatry (Aug. 1, 2020) <https://ajp.psychiatryonline.org/doi/10.1176/appi.ajp.2019.19111151> (last viewed May 26, 2025).

This initiative is so broad as to include any person providing one of the “healing arts” which is undefined in #110. This phrase is wide-ranging. According to one university, beyond just the practice of medicine, “The term ‘healing arts’ refers to a wide range of creative and disciplined practices that foster an individual’s innate healing potential thereby promoting health, wellness, coping skills, and personal change.”⁵ In fact, it is commonly understood to include music therapy, dance therapy, drama therapy, and art therapy,⁶ as well as massage therapy.⁷

Finally, a person will “provide” surgery by paying for it (“procure,” “afford,” or “contribute”) as well as doing anything to “prepare” for or “supply” anything associated with it. Thus, one who is the payor for the surgery provides it; one who readies the operating theater’s sterile surgical equipment or who launders surgical gowns or preps the O.R. does too.

The inclusion of verbs other than “perform” in #110, in conjunction with the unending list of the many professions and “other” persons who are subject to the measure for acts beyond performing surgery, magnify its reach, unbeknownst to the electorate. And in the world of single subject analysis, that inability to know is precisely what the single subject requirement was intended to preempt. If an average voter could not understand how far this measure goes, the Board cannot set a title for it, and it should reverse its decision to do so.

Furthermore, contrary to C.R.S. § 1-40-105(3), this initiative has not been “worded with simplicity and clarity and so that the effect of the measure will not be misleading or likely to cause confusion among voters.” It is almost certain to confuse voters, both because of the verbiage choices of Proponents and the fact that those choices have resulted in at least one “surreptitious provision coiled up in the folds” of the text that could contribute to “inadvertent passage” of the initiative. *In re Title, Ballot Title, & Submission Clause for Proposed Initiative 2001-2002 No. 43*, 46 P.3d 438, 440 (Colo. 2002) (quoting *In re Breene*, 24 P. 3, 4 (1890)). As such, the Board should find it lacks jurisdiction to set these titles.

B. Initiative #110 conceals, and voters will be surprised by, the types of acts that are covered by its use of “altering biological sex characteristics.”

Given its purposeful vagueness, voters considering Initiative #110 will not understand what types of procedures are covered because a central element of the lack of clarity baked into this measure’s reference to “altering biological sex characteristics.” As a central aspect of the initiative, voters cannot know what this measure will actually do. *See Initiative 2005-2006 #55, supra*.

“Characteristic” is defined as “belonging to or especially typical or distinctive of the character or essential nature of.” *Cooperman v. David*, 214 F.3d 1162, 1166 (10th Cir. 2000),

⁵ <https://finearts.unm.edu/arts-in-medicine/education/> (last viewed May 26, 2025).

⁶ *What to know about the healing arts*, Medical News Today, <https://www.medicalnewstoday.com/articles/what-are-the-healing-arts#types> (last viewed May 26, 2025).

⁷ <https://www.chsa.net> (last viewed May 26, 2025).

citing *Webster's Third New International Dictionary* 376 (1986). That seems clear enough. What isn't clear is how this concept gets applied to "altering" and "biological sex."

Proponents will no doubt contend their measure requires surgery be "for the purpose of" altering biological sex characteristics. But *whose* purpose do they have in mind? The minor's purpose? The parents' purpose? A doctor's purpose? The initiative is open-ended (and thus unclear) on that point.

The fact that this measure applies to any "other person" and uses the deliberately unclear references to "providing" and "administering" a surgery means that voters will be misled. "The single-subject requirement is designed to protect voters against fraud and surprise." *In re Title, Ballot Title & Submission Clause for Amendment Adding Section 2 to Article VII (Petitions)*, 907 P.2d 586, 589 (Colo. 1995). For this reason, Initiative #110 violates the single subject requirement.

As noted above, the term "treatment" controls the undefined term, "surgery." "Treatment" is so much broader than "surgery" that voters would be confused and surprised when it is given effect after the election. And it must be presumed that proponents used this term for a reason. And having used different terms within the same provision of law, the courts will not view them as being the same concept but, instead, will presume that they were used to reflect different meanings. *Rediger, supra*, 2018 CO 32, ¶22

For these reasons, Initiative #110 violates the single subject requirement. Therefore, the Board should reverse its earlier title setting decision.

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

A. The Title Board incorrectly stated that this measure creates new law when, in fact, it repeals existing law.

Earlier this year, the Colorado General Assembly adopted and the Governor signed HB25-1309 (Concerning Protecting Access to Gender Affirming Health Care). That bill guaranteed access to, and insurance coverage of, gender affirming health care including surgery. See https://leg.colorado.gov/sites/default/files/2025a_1309_signed.pdf. Initiative #110 would repeal that protection and the requirement that health care insurance providers treat such care as covered and thus pay for it. This measure repeals those protections, but the title does not indicate that fact.

Even though Initiative #110 does not refer to the statutes adopted as part of HB25-1309, it is a repeal nonetheless.

The Century dictionary defines the word "repeal": "To revoke, abrogate as a law or statute. It usually implies a recalling of the act by the power that made or enacted it. To give up, dismiss. To call back, recall, revoke, retract." Among the definitions given to the word by Webster is "To revoke, to rescind or abrogate by

authority, as by act of the legislature,” and as synonyms of the word “repeal” he gives the following: “To abolish, to revoke, rescind, recall, annul, abrogate, cancel.”

Wilson v. People, 85 P. 187 (Colo. 1906). Initiative #110 plainly revokes, abrogates, annuls, or cancels the law adopted by the General Assembly. The title should so indicate.

B. The titles omit reference to the many non-surgical personnel who, by their mere professional status, have the potential for violating Initiative #110.

As addressed above, Initiative #110 expressly covers professions that have nothing to do with services rendered in a surgical theatre. Clarity about this fact is missing from the titles, as reference to “health care professionals” is insufficient.

Similarly, the titles do not refer to persons engaged in the “healing arts” which is extremely broad in its usage, as established above. This extraordinary breadth, written into Initiative #110, should be reflected in the titles.

C. The titles omit reference to out-of-state health care professionals who also have the potential for violating Initiative #110.

Proponents seek to do to gender affirming care what the state of Texas sought to do to abortion rights: prohibit in-state residents from seeking out-of-state health care.⁸ Initiative #110 defines “health care professional” as one “licensed in this state **or any other state.**” Proposed Section 12-30-125(2)(a) (emphasis added). Thus, #110 seeks to regulate Coloradans’ access to non-Colorado health care professionals. Not only is this a single subject problem as noted above, but the title’s failure to even address this aspect of the initiative will mislead voters. Voters should certainly know they are being asked to prohibit access to health care professionals, no matter where they are located in the country or even the world.

WHEREFORE, in light of the arguments and legal precedent cited above, the Title Board should dismiss Initiative #110 for lack of jurisdiction, and if it does not do so, it should revise the titles so that they are at least more fair, more accurate, and not misleading.

⁸ *Interstate travel becomes a target for the anti-abortion movement with Texas filing*, National Public Radio (May 17, 2024); <https://www.npr.org/2024/05/17/12s52218618/interstate-travel-becomes-a-target-for-the-anti-abortion-movement-with-texas-fil> (last viewed May 26, 2025).

RESPECTFULLY SUBMITTED this 13th day of August, 2025.

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 #110** was sent this day, August 13, 2025, via email to counsel for the proponents at:

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