

**IN RE: TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE  
FOR INITIATIVE 2023-2024 #30  
("CONCERNING ELIGIBILITY FOR PAROLE")**

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Initiative Proponents:  
Suzanne Taheri & Steven Ward

Objector:  
Christine M. Donner

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**MOTION FOR REHEARING**

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By undersigned counsel, Christine M. Donner, a registered voter of the City and County of Denver, objects to the titles set for Initiative #30, pursuant to C.R.S. § 1-40-107(1)(a)(I).

On April 19, 2023, the Title Board set the following ballot title and submission clause for Initiative #30:

*Shall there be a change to the Colorado Revised Statutes concerning parole eligibility for an offender convicted of a violent crime, and, in connection therewith, requiring an offender who is convicted of committing crimes of violence including second degree murder; first degree assault; class 2 felony kidnapping; sexual assault; first degree arson; first degree burglary; or aggravated robbery on or after January 1, 2025, to serve eighty-five percent of the sentence imposed before being eligible for parole, and requiring an offender convicted of committing any such crime on or after January 1, 2025, who has twice previously been convicted of crimes of violence, to serve the full sentence imposed before beginning to serve parole?*

**I. The Title Board lacks jurisdiction to set a ballot title for Initiative #30.**

A. The single subject requirement is intended to prevent voters from having to weigh a goal they support against a goal they oppose and thus attract votes for an initiative’s purpose(s) that cannot stand alone to gain an electoral majority.

The single subject requirement is a bar against forcing voters into policy trade-offs – getting one goal they support on the condition that they accept a policy they oppose. “[T]he single subject requirement for ballot initiatives prevents proponents from engaging in ‘log

rolling’ tactics, that is, combining multiple subjects into a single initiative in the hope of attracting support from various factions that may have different or even conflicting interests.” *In re Title, Ballot Title, & Submission Clause for Initiative 2015-2016 #132*, 2016 CO 55, ¶13, 374 P.3d 460 (Colo. 2016).

B. Giving the governor the power to grant parole is a separate subject.

The obvious subject of the measure is the change in conditions to parole for persons who committed of certain crimes. It is not, however, the only subject of Initiative #30.

The governor cannot now grant parole. He may grant reprieves, commutations, and pardons. Colo. Const., art. IV, sec. 7. Those powers are different in nature and kind from parole. A person on parole is still in the custody of the State. *Danielson v. Dennis*, 139 P.3d 688, 692 (Colo. 2006) (“The legislature’s mandate that prisoners remain in legal custody during parole, and that parole is not a discharge from imprisonment, reflects the long-prevailing view of parole”). A person who has received discretionary parole will “serve some portion of the sentence under the parole board’s supervision in lieu of imprisonment.” *People v. Cooper*, 8 P.3d 554, 557 (Colo. App. 2000). The decision to grant or withhold parole is within the “exclusive authority” of the Parole Board. *People v. Luther*, 58 P.3d 1013, 1016 (Colo. 2002).

In contrast, a person who has had his sentence commuted or is pardoned is fully released from any obligation to the state. As such, the governor has no responsibility to oversee the acts of a person who has been pardoned or received a reprieve or whose sentence is commuted.

This measure gives the governor that power of parole, one he had in certain cases beginning in 1899 but which he has not had in more than half a century. As such, Initiative #30 represents a marked reversal in state policy, giving a single elected official a task that he hasn’t been authorized to perform for decades. This structural change, combined with a dramatic policy change, raises single subject concerns. See *In re Title, Ballot Title, & Submission Clause for Initiative 2007-2008 #17*, 172 P.3d 871, 875 (Colo. 2007).

In so doing, this measure is an example of log-rolling. First, it is designed to appeal to “tough-on-crime” voters by making parole more difficult or, in some cases, impossible to obtain. Preventing the state’s Parole Board from even considering such offenders is intended to and will appeal to such voters.<sup>1</sup>

Initiative #30 also opens a new door of parole via a person holding political office. It does so, subject only to that officer’s discretion of what constitutes “extraordinary mitigating circumstances” and the judgment that societal safety and welfare will be kept intact. For those who advocate less incarceration either for persons who commit certain crimes or who find the

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<sup>1</sup> See, e.g., *Warning signs: Colorado parole changes put Fort Collins child at risk*, [The Coloradan](https://www.coloradoan.com/story/news/2017/03/03/warning-signs-colorado-parole-changes-put-fort-collins-child-risk-abuse/98548214/) (Mar. 3, 2017); <https://www.coloradoan.com/story/news/2017/03/03/warning-signs-colorado-parole-changes-put-fort-collins-child-risk-abuse/98548214/>; *Colorado parole operations blasted for giving parolees too much leniency*, [The Denver Post](https://www.denverpost.com/2017/01/04/parolee-reduction-policies-danger-colorado/) (Jan. 4, 2017); <https://www.denverpost.com/2017/01/04/parolee-reduction-policies-danger-colorado/> (last viewed Apr. 26, 2023).

Parole Board's practices to be too restrictive, this second element is bait to get their votes. And those who believe in restricting the governor's power to change sentences after conviction will likewise be conflicted, given the limitation on Parole Board powers under the measure's other provisions but the expansion of the governor's powers as well.<sup>2</sup>

C. The measure's use of undefined "crimes of violence" is incomprehensible, and the Board cannot set a title for a measure that defies understanding.

The title states that a person who "commit[s] crimes of violence including" certain stated crimes must serve 85% of the sentence before seeking parole and/or 100% of the sentence imposed if a person "has twice previously been convicted of crimes of violence." As addressed below, the listed crimes are not referred to as "crimes of violence" in the measure itself, and thus these references are misleading.

Initiative #30 provides only that persons who have committed the various listed crimes and who also have "previously been convicted of a crime of violence" must serve a minimum sentence before being eligible for parole. Is that new condition a conviction of a "crime of

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<sup>2</sup> One former district attorney, now a political commentator, expressed umbrage about discretionary decisions made by a governor regarding sentences imposed in this way:

A governor can substitute their own judgement for what the appropriate outcome of a case is regardless of what the prosecutor, judge and jury determined at the time of conviction and sentencing. A governor can apply whatever modern ideological analysis to any case, far removed from the laws and values governing the community in which the crime was committed. **It is generational hubris. Those in power believe themselves to be the arbiter of what justice looks like — not just for themselves — but for generations past.**

Brauchler, G., *Jared Polis – Colorado's Pardonier in chief*, *Colorado Politics* (Dec. 29, 2022) (emphasis added); [https://www.coloradopolitics.com/opinion/jared-polis-colorado-s-pardonier-in-chief-brauchler/article\\_a8f29b54-86ea-11ed-8fa5-5bb4c1a7e8fe.html](https://www.coloradopolitics.com/opinion/jared-polis-colorado-s-pardonier-in-chief-brauchler/article_a8f29b54-86ea-11ed-8fa5-5bb4c1a7e8fe.html) (last viewed Apr. 26, 2023).

violence” as defined by C.R.S. § 18-1.3-406(2)(a)(I)<sup>3</sup>? Or as defined by C.R.S. § 16-1-104(8.5)(I)<sup>4</sup>? Or by C.R.S. § 24-10-106.3<sup>5</sup>? Initiative #30 does not say which definition applies.

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<sup>3</sup> Under C.R.S. § 18-1.3-406(2)(a)(I):

“Crime of violence” means any of the crimes specified in subparagraph (II) of this paragraph (a) committed, conspired to be committed, or attempted to be committed by a person during which, or in the immediate flight therefrom, the person:

- (A) Used, or possessed and threatened the use of, a deadly weapon; or
- (B) Caused serious bodily injury or death to any other person except another participant.

(II) Subparagraph (I) of this paragraph (a) applies to the following crimes:

- (A) Any crime against an at-risk adult or at-risk juvenile;
- (B) Murder;
- (C) First or second degree assault;
- (D) Kidnapping;
- (E) A sexual offense pursuant to part 4 of article 3 of this title;
- (F) Aggravated robbery;
- (G) First degree arson;
- (H) First degree burglary;
- (I) Escape;
- (J) Criminal extortion; or
- (K) First or second degree unlawful termination of pregnancy.

(b) (I) “Crime of violence” also means any unlawful sexual offense in which the defendant caused bodily injury to the victim or in which the defendant used threat, intimidation, or force against the victim. For purposes of this subparagraph (I), “unlawful sexual offense” shall have the same meaning as set forth in section 18-3-411 (1), and “bodily injury” shall have the same meaning as set forth in section 18-1-901(3)(c).

(II) The provisions of subparagraph (I) of this paragraph (b) shall apply only to felony unlawful sexual offenses.

<sup>4</sup> Under C.R.S. § 16-1-104(8.5)(I):

“Crime of violence” means a crime in which the defendant used, or possessed and threatened the use of, a deadly weapon during the commission or attempted commission of any crime committed against an elderly person or a person with a disability or a crime of murder, first or second degree assault, kidnapping, sexual assault, robbery, first degree arson, first or second degree burglary, escape, or criminal extortion, or during the immediate flight therefrom, or the defendant caused serious bodily injury or death to any person, other than himself or herself or another participant, during the commission or attempted commission of any such felony or during the immediate flight therefrom.

(II) “Crime of violence” also means any unlawful sexual offense in which the defendant caused bodily injury to the victim or in which the defendant used threat, intimidation, or force against the victim. For purposes of this subparagraph (II), “unlawful sexual offense” shall have the same meaning as set forth in section 18-3-411(1), C.R.S., and “bodily injury” shall have the same meaning as set forth in section 18-1-901 (3)(c), C.R.S.

<sup>5</sup> Under C.R.S. § 24-10-106.3:

“Crime of violence” means that the person committed, conspired to commit, or attempted to commit one of the following crimes:

- (I) Murder;
- (II) First degree assault; or
- (III) A felony sexual assault, as defined in section 18-3-402, C.R.S.

Notably, Title 17 of the Colorado Revised Statutes (amended by this initiative) does not help resolve which statutory definition might be applicable. There are cross-references to both C.R.S. § 18-1.3-406 and C.R.S. § 16-1-104 within that title. Compare C.R.S. § 17-22.5-303(6) (precluding consideration of parole more than once every five years for persons who commit crimes of violence under C.R.S. § 18-1.3-406) with C.R.S. § 17-2-103.5(1)(II)(B) (authorizing revocation of parole of persons who commit crimes of violence under C.R.S. §16-1-104(8.5)).

Additionally, these statutory definitions are not the full extent of the legal meaning of “crime of violence.” A “crime of violence” includes an attempt to commit such a crime. *People v. Laurson*, 70 P.3d 564 (Colo. App. 2002) (courts treat “attempt” as a crime of violence). It also includes conspiracy to commit a crime of violence also a crime of violence. *Terry v. People*, 977 P.2d 145 (Colo. 1999) (courts treat such a “conspiracy” as a crime of violence). And *per se* crimes of violence are treated on par with those that are listed in statute. *Chavez v. People*, 2015 CO 62, ¶13, 359 P.3d 1040, 1043 (*per se* crimes of violence and statutorily defined crimes of violence are both treated as crimes of violence in sentencing). Does the Title Board know if these crimes are included in Initiative #30’s reach? And will voters?

In a related context, it is also unclear if “crime of violence” has the same meaning as “violent crime.” Under existing statutes, it does not.<sup>6</sup> The ballot title set uses both phrases (“crime of violence” and “violent crime”), but “violent crime” does not appear in the text of Initiative #30. Its meaning as used in the ballot title is therefore unclear and confusing.

It is also possible that “crime of violence” under this measure means something entirely different from these existing definitions, given the measure’s silence on the issue. Unfortunately, when perusing this title, voters won’t know. And for now, the Title Board cannot know either.

The Board lacks jurisdiction to set a title where it does not know what the measure before it will accomplish. If the Board does not understand the way in which the measure will operate if adopted by voters, voters will not be able to understand it either. As such, the Board cannot find the initiative contains a single subject. *In the Matter of the Title, Ballot Title and Submission Clause, and Summary for Initiative 1999-2000 #25*, 974 P.2d 458, 468-69 (Colo. 1999). Therefore, the Title Board lacks jurisdiction to set a title for Initiative #30.

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

### **A. The measure is so vague as to defy understanding, given the use of the undefined term “crimes of violence” as the central factor for changing parole eligibility.**

As addressed above, “crimes of violence” is a phrase that has so many meanings and is so imprecise under this measure, a clear ballot title cannot be set. The Board cannot set “titles for which the general understanding of the effect of a ‘yes’ or ‘no’ vote will be unclear.” *Id.* at 469.

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<sup>6</sup> This term is defined by C.R.S. § 18-22-102(3) as follows:

“Violent crime” means a felony enumerated as a crime of violence pursuant to section 18-1.3-406 or a felony involving a weapon or firearm.

Proponents are entitled to use undefined terms in their measure, up to a point. If voters cannot know what they may be authorizing or prohibiting by a “yes” vote – and here, they cannot – the Title Board necessarily will set a misleading ballot title. A ballot title “is illogical and inherently confusing [where it] does not allow voters ‘to determine intelligently whether to support or oppose the proposal.’” *In the Matter of the Title, Ballot Title and Submission Clause for Initiative 2015-2016 #156*, 2016 CO 56, ¶13, 375 P.3d 123 (Colo. 2016) (citation omitted). This is true even where the measure “substantially tracks language found in the initiative itself and thus may faithfully express the initiative’s intent.” *Id.*, ¶15.

B. “Violent crime” and “crimes of violence” are political slogans, designed to prejudice voters’ consideration of this measure.

A ballot title should allow voters to consider the merits of a proposal without using language that appeals to voters’ emotions. “By drawing attention to themselves and triggering a favorable response, catch phrases generate support for a proposal that hinges not on the content of the proposal itself, but merely on the wording of the catch phrase.” *In re Proposed Initiative 1999-2000 # 258(A)*, 4 P.3d 1094, 1100 (Colo. 2000) A catch phrase “encourage[s] prejudice in favor of the issue and, thereby, distract[s] voters from consideration of the proposal’s merits.” *Id.* Sometimes that slogan, when used in another context, is be a neutral statement but as used in the ballot title, it becomes politically charged wording that diverts voters from the measure’s relative merits. *Id.* (holding that the term “as rapidly and effectively as possible,” used in relation to teaching children English, was improper catch phrase).

This ballot title uses “violent crime” in the single subject statement and “crimes of violence” twice in the balance of the titles. These are terms that are used for purposes of political positioning.<sup>7</sup> Recent research shows a skewed voter reaction to “violent crime” without regard to statistical evidence about it.<sup>8</sup> Such language is sure to detract from substantive debate over changes to parole eligibility.

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<sup>7</sup> Such wording is regularly used to set the stage for political campaigns and to enflame voter emotions. For example, one political actor’s recent op-ed used “violent crime” in its headline and five other times to persuade voters to a certain viewpoint, concluding: “As Coloradans drown in crime, there is a lifeboat in the distance with two words on its side becoming clearer every day: ‘Election 2022.’” Brauchler, G., *Colorado violent crime is higher than the national average for the first time in decades*, *The Denver Post* (Oct. 21, 2021); <https://www.denverpost.com/2021/10/04/colorado-violent-crime-higher-national-average-brauchler/> (last viewed Apr. 25, 2023). Notably, this opinion piece uses yet a different definition of “violent crime,” one that is used by the Federal Bureau of Investigation which does not mirror any Colorado law. *Id.* (“violent crime [is] defined as a homicide, murder, nonnegligent manslaughter, rape, robbery, and aggravated assault”).

<sup>8</sup> See Pew Research Center, *Violent crime is a key midterm voting issue, but what does the data say?*, <https://www.pewresearch.org/short-reads/2022/10/31/violent-crime-is-a-key-midterm-voting-issue-but-what-does-the-data-say/> (last viewed Apr. 26, 2023) (“Media coverage could affect voters’ perceptions about violent crime, too, as could public statements from political candidates and elected officials.... More broadly, the public often tends to believe that crime is up, even when the data shows it is down. In 22 of 26 Gallup surveys conducted since 1993, at least six-in-ten U.S. adults said there was more crime nationally than there was the year before, despite the general downward trend in the national violent crime rate during most of that period.”).

C. The use of “violent crime” in the single subject statement is unwarranted and misleading.

As stated above, the titles use the phrase, “convicted of a violent crime.” The initiative does not use this terminology. Whether it is equivalent to “crimes of violence” is not apparent. As noted, the two phrases are defined differently by statute with “violent crime” being defined more narrowly than two statutory definitions and more broadly than one other definition. One thing is certain: it is prejudicial and misleading and should be stricken from the titles.

D. The use of “any such crime” in the titles is unclear and misleading.

The titles refer to “an offender convicted of committing any such crime.” Does “any such crime” refer to the crimes listed earlier in the title? Or to “crimes of violence?” Or to both? A voter cannot know based on the current wording of the titles, and this lack of clarity should not burden petition signers or voters.

E. The use of “convicted of committing crimes of violence including” certain listed crimes is unclear and misleading.

The titles refer to persons “convicted of committing crimes of violence including” a list of stated crimes. “Including” is an expansive term that indicates the list is non-exclusive. *Lyman v. Town of Bow Mar*, 533 P.2d 1129, 1133 (1975) (“[T]he word ‘include’ is ordinarily used as a word of extension or enlargement.... To hold otherwise here would transmogrify the word ‘include’ into the word ‘mean.’”) *Arnold v. Colo. Dep’t of Corr.*, 978 P.2d 149, 151 (Colo. App. 1999) (“[T]he word ‘include’ is ordinarily used as a word of extension or enlargement and is not definitionally equivalent to the word ‘mean.’”)

If the Board intended to use “including” to be expansive, it should identify what other crimes are included. If this was not the Board’s intent, “including” should be stricken from the titles. Either way, the title as currently phrased is misleading.

F. The governor’s ability to parole certain persons who have been convicted of certain crimes is not addressed at all in the titles, making the titles misleading to voters.

As addressed above, giving the governor a power he does not now – and has not for decades – possessed is a key element of this measure. The ability of a governor to have an expanded power in this regard will be notable to voters. *See* fn.2, *supra*. The titles are silent on the transfer of power and thus the measure’s breadth. This silence will mislead voters.

WHEREFORE, in light of the arguments and legal precedent cited above, the Title Board should reverse its single subject decisions regarding Initiative #30, and if it does not do so, it should revise the titles so that they are fair, accurate, and not misleading.

RESPECTFULLY SUBMITTED this 26th day of April, 2023.

RECHT KORNFELD, P.C.

s/ Mark Grueskin

Mark G. Grueskin

1600 Stout Street, Suite 1400

Denver, CO 80202

Phone: 303-573-1900

Email: [mark@rklawpc.com](mailto:mark@rklawpc.com)

**CERTIFICATE OF SERVICE**

I, Kate Sorice, hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2023-2024 #30** was sent this day, April 26, 2023, via email to counsel for the proponents at:

[ST@westglp.com](mailto:ST@westglp.com)

And mailed first-class, postage prepaid to Proponents:

Suzanne Taheri & Steven Ward  
6501 E. Belleview Ave, Suite 375  
Denver, CO 80111

s/ Kate Sorice