

MEMO

To: Whom it May Concern

From: Conservation Colorado, Natural Resources Defense Council Action Fund, and Southwest Energy Efficiency Project

Date: January 2024

Re: Potential Implications of Ballot Measure #86 – “Consumer Choice in Energy”

Overview

The oil and gas industry is working to place a drastic measure ([#86](#), see full text below) on the 2024 Colorado statewide ballot that would upend Colorado’s work on nationally-leading climate policies and would likely have devastating impacts on public health and safety.

The oil and gas industry (Chevron, Occidental, and PDC) is [behind the measure](#) and is [actively gathering signatures](#). Recent reporting noted that “Protect Colorado, the industry’s issue committee, brought in \$3.4 million and spent \$2.3 million in November.”

If passed, this measure could be used by the industry as a free-for-all, swinging the door wide open to try to invalidate numerous climate policies in its attempt to prohibit any and all state or local regulations based on fuel type. The language is so broad and vaguely written that the industry could use it to apply it to practically every energy generation source, energy delivery method, or energy use, and even, industry could argue, almost every state and local safety rule concerning natural gas. As written, it could cover utilities, state government, local governments, individual households, and businesses, with no exceptions for health or safety.

If successful, this attack from the oil and gas industry would once again mean that the communities who have been disproportionately impacted by climate change and air pollution will continue to bear the largest burden of their costs.

This overly broad and vague measure could be a “code red” for the oil and gas health and safety regulatory system, reducing fossil fuel use, and electrification and decarbonization efforts in Colorado. State leaders, organizations, and the public should oppose these measures and take immediate steps to keep them from getting onto the 2024 ballot.

Potential impacts

If the measure passes, the oil and gas industry and others would likely try to:

- **Completely undermine state and local building decarbonization efforts.** State and local policies that move Colorado toward electrification and heat pumps could be stopped, including:
 - Utility incentives for heat pumps or heat pump water heaters to customers currently using gas in their homes.
 - State tax credits for heat pumps and other electrification systems; it’s not clear if the state would even be allowed to administer all the financial incentives from the federal Inflation Reduction Act.
 - State energy code law that requires electric-ready and solar-ready buildings.
- **Gut local building and zoning codes.** Local governments would likely be barred from adopting common standard building codes regulating the health and safety of new

buildings without serious revisions.

- More than 300 local governments and local districts could be made to devote significant staff time and taxpayer dollars to rewrite large portions of the International Residential Code, International Building Code, and International Mechanical Code to remove any requirements on mechanical systems and appliances that are specific to one fuel type.
 - Any requirement in these codes regarding a specific energy source, piece of equipment, or appliance could be considered “discriminatory” unless it has identical requirements on every other fuel, piece of equipment, or appliance – even if identical requirements are nonsensical.
 - Local governments could potentially be made to disregard the location, size, noise level, or pollution levels from energy technologies.
- **Unravel the clean heat and gas planning frameworks.** Key aspects of the Clean Heat statute and rules could be at risk of invalidation.
 - For example, the statutory caps on recovered methane would be considered to “discriminate” against methane as an energy source, the resources that can be used for compliance arguably discriminate against resources not listed, and any limitations on hydrogen usage could be considered “discriminatory.”
 - Similarly, many of the PUC’s rules on gas planning could be invalidated to the extent that they encourage cheaper and safer non-pipeline alternatives.
 - **Inhibit state efforts to promote emerging technologies, like geothermal.** Based on the definition of “restrict,” the measure could make it difficult to pursue market-based policies related to consumer end-use of energy that are not fuel or technology-neutral.
 - For example, state policies encouraging the use of geothermal energy for space and water heating could be considered to discriminate against all other forms of energy (like natural gas for space and water heating).
 - **Stop Colorado’s transition to clean, renewable electricity** by making the case that any policy supporting renewable energy instead of fossil fuels should be prohibited.
 - The definition of “energy” in the measure confuses and intermingles sources of electricity generation, technologies for electricity generation, and fuels combusted directly in homes and buildings.
 - Thus the state’s Renewable Energy Standard, net metering policy, community solar garden programs, and any other state or local effort to move away from fossil fuels in the generation of electricity could be invalidated.
 - **Eliminate safety rules protecting against natural gas leaks or explosions.** The ballot measure doesn’t allow any exceptions for protecting health and safety.
 - Every single safety rule affecting natural gas pipes both inside and outside of our homes could be challenged by industry because they “restrict” or “discriminate against” natural gas.
 - This also means that communities could be prohibited from adopting or enforcing the International Fuel Gas Code because it has specific requirements for gaseous and liquid fuel pipes (e.g. safety protections like shut-off valves and pipeline pressure testing).
 - **Drastically increase utility rates.** As written, proponents could argue that virtually any resident or business could demand a personal supply of energy from their preferred energy source, regardless of the availability, location, or price to other consumers.

- The Public Utilities Commission, which regulates utility bill rates for most of the state, could then be challenged in passing any rules impacting such service demands.
- **Put severe limitations on federal funding.** Because the measure is written so broadly, it could be argued that implementing a federal funding program would be considered “adopting a statute, ordinance, rule, county resolution, or code.”
 - Thus, Colorado might face costly delays in accessing or utilizing millions of dollars in Inflation Reduction Act and Bipartisan Infrastructure Law funding (see the table below for examples).
- **Tie climate policy up in costly litigation.** Since the ballot language is so broad, vague, and poorly written, it will necessitate years of costly litigation between states, localities, the oil and gas industry, utilities, and community advocates, chipping away at the few years we have left to meaningfully address the climate crisis.

The ballot question voters will see if Initiative #86 is the measure ultimately sent to the ballot – [source](#)

Shall there be a change to the Colorado Revised Statutes concerning regulating energy consumption, and, in connection therewith, prohibiting the state, local governments, and special districts from adopting a law, ordinance, regulation, or code that favors or discriminates against consumer use of electricity, natural gas, solar, or wind power in homes and businesses for cooking, hot water systems, generators, or heating systems and declaring energy consumption a matter of statewide, and not local, concern?

Full language of #86

Be it enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, title 40, add article 44 as follows: 40-44-101. Energy choice – declaration – definitions.

(1) Declaration. THE VOTERS OF THE STATE OF COLORADO FIND AND DECLARE THAT ENERGY CONSUMPTION IS A MATTER OF STATEWIDE CONCERN. THE INTENT OF THE VOTERS IN ENACTING THIS SECTION IS TO PROTECT CONSUMER CHOICE IN ENERGY.

(2) Definitions. AS USED IN THIS SECTION, UNLESS CONTEXT OTHERWISE REQUIRES:

(a) “CONSUMER CHOICE” MEANS ALLOWING A CONSUMER TO CHOOSE THEIR PREFERRED ENERGY SOURCE.

(b) “ENERGY” MEANS CONSUMER USE OF ELECTRICITY, NATURAL GAS AS DEFINED IN SECTION 34-64-102, SOLAR ENERGY DEVICE AS DEFINED IN SECTION 38-32.5-100.3, OR WIND ELECTRIC GENERATION, AND, WITH RESPECT TO A SOLAR ENERGY DEVICE OR WIND ELECTRIC GENERATION, THAT MEETS THE INTERCONNECTION STANDARDS ESTABLISHED IN RULES PROMULGATED BY THE PUBLIC UTILITIES COMMISSION PURSUANT TO SECTION 40-2124.

(c) “RESTRICT” MEANS FAVORING OR DISCRIMINATING AGAINST AN ENERGY SOURCE.

(3) A STATUTE, ORDINANCE, REGULATION OR CODE OF THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE SHALL NOT RESTRICT AN ENERGY SOURCE USED FOR COOKING, HOT WATER SYSTEMS, GENERATORS OR HEATING SYSTEMS BASED UPON THE TYPE OF ENERGY TO BE DELIVERED TO

AN INDIVIDUAL CONSUMER.

SECTION 2. Effective date. This act shall take effect upon proclamation by the Governor announcing the approval, by the registered electors of the state, of the proposed initiative.

Table: IRA/IIJA programs that could be impacted

Please note that these funding impacts are estimates only, meant to illustrate how measure #86 may affect Colorado's ability to access and use federal funding under an extreme interpretation of the language. Additional funding sources may also be affected. Actual impacts would depend on legal interpretation of ballot measure #86.

Program	CO Funding Allocation	Notes
Home Efficiency Rebates	\$70,395,350	HER funding may be at risk because the program is tied to ENERGY STAR. The state would potentially not be able to distribute rebates for equipment types that favor one type of energy over another.
Home Electrification and Appliance Rebates	\$69,985,890	Heat pump rebates could be disqualified. Rebates for induction ranges and any other fuel switching could also be affected.
State-Based Home Efficiency Contractor Training Grants	\$2,501,170	State-funded trainings may have to focus equal time and attention on systems of each fuel type regardless of interest.
Assistance for Latest and Zero Building Energy Codes	\$7,075,568	All-electric, electric-preferred, and electric-ready codes would be barred. The State's energy code law requiring electric-ready and solar-ready would be defunct.
Climate Pollution Reduction Grants	Up to \$500 million (pending competition)	State or local government Implementation Grant applications may not be allowed to include heat pump incentives, targeted electrification, increased renewables, or anything that would reduce or phase out fossil fuels.
Greenhouse Gas Reduction Fund	Up to \$400 million (pending competition)	Solar for All Program implementation may be impaired because it would incentivize solar over other energy types.