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ELECTIONS
SECRETARY OF STATE

Before the Colorado Title Setting Board

IN THE MATTER OF THE TITLE AND
THE BALLOT TITLE AND SUBMISSION CLAUSE
FOR INITIATIVE 2009-2010 #45 ("HEALTH CARE CHOICE")

Dr. Mark Earnest, Peter Leibig, Albert Schnellbacher, Jr., AARP Colorado, the Colorado Community Health Network, the Colorado Coalition for the Medically Underserved, and the Colorado Consumer Health Initiative, Movants,

v.

Linda Gorman and Jon Caldara, Respondents.

MOTION FOR REHEARING

Dr. Mark Earnest, Peter Leibig, Albert Schnellbacher, Jr., AARP Colorado, the Colorado Community Health Network, the Colorado Coalition for the Medically Underserved, and the Colorado Consumer Health Initiative, registered electors of the State of Colorado and organizations whose members include registered electors of the State of Colorado, submit this Motion for Rehearing, through their counsel, Isaacson Rosenbaum P.C., to reconsider the jurisdiction of the Title Board to act in this matter and to reconsider the language used in the title and ballot title and submission clause, set at the March 17, 2010 meeting of this Board.

1. The Title Board lacks jurisdiction over this measure, as the initiative violates the single subject requirement. Colo. Const., art. V, sec. 1(5.5). The subjects of this measure include:

- (a) creating a general exception to federal laws dealing with health care payment systems for persons in Colorado;
- (b) prohibiting implementation of any *state* government mandates to purchase any health insurance product or participate in any public or private health care plan or benefit;
- (c) prohibiting implementation of any *federal* government mandates to purchase any health insurance product or participate in any public or private health care plan or benefit;
- (d) prohibiting implementation of any *state* law, regulation, or policy that would limit a person's ability to privately purchase or sell any lawful health care services;
- (e) prohibiting implementation of any *federal* law, regulation, or policy that would limit a person's ability to privately purchase or sell any lawful health care services; and

(f) expanding accepted lawful health care services to include those that are "not prohibited by Colorado law."

2. The Title Board lacks jurisdiction over a measure that is, by its express terms, contrary to the Supremacy Clause, Art. VI of the United States Constitution. *See Morrissey v. State*, 951 P.2d 911, 914-15 (Colo. 1998) (initiative is void where it is expressly inconsistent with U.S. Constitution); *Brubaker v. Board of County Comm'rs*, 652 P.2d 1050, 1056 (Colo. 1982) ("a veto power (of a valid federal law) is not consistent with the Supremacy Clause" and thus is void).

3. The Title Board lacks jurisdiction over proposals that are administrative in nature, and this measure addresses the application of health care related statutes, regulations, resolutions, and policies by state departments and agencies in ways specified in Art. II, § 32(1)(a), (b). *See Idaho Springs v. Blackwell*, 731 P.2d 1250, 1253-54 (Colo. 1987) (rule limiting pre-election judicial review of initiatives does not apply where "the electorate exceeds the proper sphere of legislation and instead attempts to exercise administrative or executive powers," the latter being "invalid").

4. The Title Board lacks jurisdiction over a proposed measure that addresses legislative resolutions, and this initiative, as a matter of its express terminology, seeks to deprive legislative resolutions of their intended legal effects. *See Prior v. Noland*, 188 P. 729, 731 (Colo. 1920) (Article V, section 1 rights of initiative and referendum rights do not apply to legislative resolutions).

5. The title violates C.R.S. § 1-40-106(3)(b) because it is misleading, likely to create confusion among voters, does not correctly and fairly express the true intent and meaning of the initiative, contains a catch phrase that is intended to prejudice public consideration of the measure, and fails to correctly and fairly express the true intent and meaning of the measure or unambiguously state the principle of the provision sought to be added to the Constitution.

(a) The following omissions render the title misleading:

(I) ", directly or indirectly," after "person" in the fourth line;

(II) "any" (rather than "a") to modify "public or private health" in that line;

(III) "or benefit" after "coverage" in that line;

(IV) "by law" after "required" in the seventh line;

(b) The title is inaccurate, as the measure does not "prohibit... the state from adopting any statutes, regulations, resolutions, or policies..."; it prohibits administration of such measures in a manner to produces the ends listed in Art. II, § 32(1)(a), (b).

(c) The "right of all persons to health care choice" is misleading, as the measure prohibits certain "choices," such as the choices to have universal health care coverage or a single payer health care plan.

(d) The "right of all persons to health care choice" is a prohibited catch phrase.

(e) The inclusion of a new and controversial legal standard through the definition of "lawful health care services" (which would include not only those health care

services that are "permitted" but also those that are "not prohibited by any provision of Colorado law") must be reflected in the title.

WHEREFORE, the Title Board should return Initiative 2009-2010 #45 to its sponsors to be corrected for jurisdictional defects before it is resubmitted for the Board's consideration, or the Board should revise the title, if that is possible, in ways that are consistent with this Motion.

Respectfully submitted this 24th day of March, 2010.

ISAACSON ROSENBAUM P.C.

By. 

Mark G. Grueskin

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of March, 2010, a true and correct copy of the foregoing **MOTION FOR REHEARING** was served via United States Mail, postage prepaid, to the following:

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