
BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE
2013-2014 #103

MOTION FOR REHEARING

Registered electors, Mizraim S. Cordero and Scott Prestidge, through their legal counsel, Ryley Carlock & Applewhite, request a rehearing of the Title Board for Initiative 2013-2014 No. 103. As set forth below, Mr. Cordero and Mr. Prestidge respectfully object to the Title Board's setting of title and the ballot title and submission clause on the following grounds:

TITLE AND SUBMISSION CLAUSE

On April 16, 2014, the Title Board designated the title as follows:

An amendment to the Colorado constitution concerning a public trust in environmental resources, and, in connection therewith, defining public trust resources to include clean air, clean water, and the preservation of the environment and natural resources; requiring the state, as trustee, to conserve and maintain public trust resources by using the best science available to protect them against substantial impairment, seeking natural resource damages from anyone who substantially impairs them, and using damages obtained to remediate the impairment; allowing Colorado citizens to file enforcement actions in court; requiring anyone who is proposing an action or policy that might substantially impair public trust resources to prove that the action or policy is not harmful; and criminalizing the manipulation of data, reports, or scientific information in an attempt to use public trust resources for private profit.

The Title Board set the ballot title and submission clause as follows:

Shall there be an amendment to the Colorado constitution concerning a public trust in environmental resources, and, in connection therewith, defining public trust resources to include clean air, clean water, and the preservation of the environment and natural resources; requiring the state, as trustee, to conserve and maintain public trust resources by using the best science available to protect them against substantial impairment, seeking natural resource damages from anyone who substantially impairs them, and using damages obtained to remediate the impairment; allowing Colorado citizens to file enforcement actions in court; requiring anyone who is proposing an action or policy that might substantially impair public trust resources to prove that the action or policy is not harmful; and criminalizing the manipulation of data, reports, or scientific information in an attempt to use public trust resources for private profit?

GROUNDNS FOR RECONSIDERATION

I. THE INITIATIVE IMPERMISSIBLY CONTAINS MULTIPLE SUBJECTS IN VIOLATION OF THE COLORADO CONSTITUTION AND STATUTES.

The Colorado Constitution and statutes require that each initiative that proposes an amendment to the Constitution shall contain only one subject and that subject shall be clearly expressed in the title. *See* Colo. Const. art. V., § 1(5.5); C.R.S. § 1-40-106.5; *In re Title, Ballot Title, Submission Clause*, 898 P.2d 1076, 1078-79 (Colo. 1995) (a proposed initiative violates the single subject rule where it “has at least two distinct and separate purposes which are not dependent upon or connected with each other.”). The Board set title for initiative No. 103 despite the fact that it contains multiple, distinct and separate purposes that are not dependent upon or connected with one another. Specifically, the initiative includes the following several, unrelated subjects:

- (1) Establishes a common property right to all “Public Trust Resources” including the “clean air, clean water, including ground and surface water, and the preservation of the environment and natural resources” (#103, §1);
- (2) Imposes upon the State a public trusteeship to protect Public Trust Resources against substantial impairment (#103, § 2);
- (3) Creates standing for any Colorado citizen to petition the courts to defend and preserve Public Trust Resources and ensure that the State is meeting its obligations under the initiative (#103, § 3);
- (4) Establishes a criminal offense for any person, corporation, or other entity found to be manipulating data, reports or scientific information in an attempt to utilize Public Trust Resources (#103, § 4);
- (5) Creates a new preemption scheme whereby any applicable local, state, or federal permit is superseded by the initiative (#103, § 5);

These subjects are not connected or interdependent and therefore the Title Board lacks jurisdiction to set a title.

II. THE INITIATIVE'S PROVISIONS ARE SO VAGUE THE BOARD CANNOT SET A TITLE THAT ENCOMPASSES AND REFLECTS THE PURPOSE OF THE PROPOSAL.

Colorado Revised Statute §1-40-106(3)(c) requires the ballot title to accurately reflect the subject matter of an initiative to avoid confusion. The Title set for initiative 103 violates this statutory provision in the following ways:

- (1) The measure purports to establish Public Trust Resources as “the common property of all the people.” However, the measure does not clearly define the term “common property” and will lead to confusion amongst voters because the public trust doctrine has traditionally been applied to lands submerged beneath tidal and navigable waterways.
- (2) The measure purports to establish the State as trustee to protect Public Trust Resources against “substantial impairment;” however the term “substantial impairment” is undefined and so vague as to mislead voters. Paragraph two goes on to note that where an action or policy that has a “suspected risk” the burden of proof in going forward is on the proponent of the action or policy. Neither suspected risk nor a standard for the burden of proof are defined.
- (3) The initiative requires the State as trustee to “prudently manage such resources” but again fails to establish any standard upon which both the State and the people can rely upon.
- (4) The final section of the initiative is misleading and confusing to voters in that it allows laws to be enacted which “enhance” the provisions of the initiative but offers no guidance as to whether laws that are more restrictive or less restrictive fall within the purview of this measure.

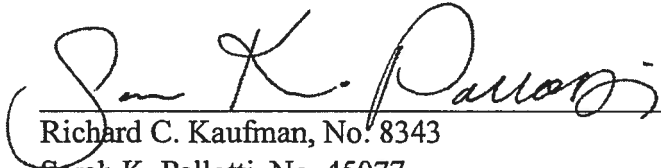
III. THE TITLE FAILS TO NOTE CRITICAL PROVISIONS OF THE MEASURE AND IS THEREFORE MISLEADING.

- (1) The title fails to note the very low standard – suspected risk – upon which the burden of proof shifts to the proponent of *any* action or policy to demonstrate there is not substantial impairment to Public Trust Resources.
- (2) The title completely omits section 5 of the initiative.
- (3) The title completely omits section 6 of the initiative.

The language of the measure is so vague that no title can correctly and fairly express the true purpose of the measure. The Title as previously approved is confusing and does not meet the requirements of §1-40-106(3)(c).

Respectfully submitted this 23rd day of April, 2014 by:

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