

RECEIVED

APR 23 2014

COLORADO TITLE SETTING BOARD

Colorado Secretary of State

S. WARD 3:21 P.M.

**IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR PROPOSED INITIATIVE 2013-2014 #121**

MOTION FOR REHEARING ON PROPOSED INITIATIVE 2013-2014 #121

On behalf of Caitlin Anne Leahy and Gregory M. Diamond, registered electors of the State of Colorado, the undersigned counsel hereby submits to the Title Board this Motion for Rehearing on Proposed Initiative 2013-2014 #121 ("Initiative #121") and as grounds therefore state as follows:

I. THE TITLE SET BY TITLE BOARD AT APRIL 16, 2014 HEARING

On April 16, 2014, the Title Board set the following ballot title and submission clause for Initiative #121:

Shall there be a change to the Colorado Revised Statutes concerning the distribution of oil and gas revenues administered by the state, and, in connection therewith, prohibiting a local government that prohibits oil and gas production or development from receiving any oil and gas revenues administered by the state during the prohibition and requiring those revenues to be redistributed to other local governments that allow oil and gas production or development?

II. GROUND FOR REHEARING

A. The Title Board Lacked Jurisdiction to Set a Title Because the Initiative Was Not Timely Filed Pursuant to Section 1-40-106(1), C.R.S.

The Title Board lacks jurisdiction to set a title for Initiative #121 because it did not receive Initiative #121 until several days after the 3:00 p.m., April 4, 2014 deadline for submission as prescribed by §1-40-106(1), C.R.S. Although counsel for the designated representatives stated that the language was faxed to the Secretary of State before the 3:00 pm deadline, and a handwritten notation to that effect has been produced, no fax confirmation sheet demonstrating timely submission has been produced. The Title Board confirmed that the Secretary of State's office did not receive Initiative #121 until sometime the following week. Submission of a proposed initiative several days after the 3:00 pm deadline fails to meet the statutory deadline, and does not substantially comply with the statutory deadline. *See Fabec v. Beck*, 922 P.2d 330, 341 (Colo. 1996).

Ms. Leahy and Mr. Diamond were injured by the late filing of Initiative #121, because they and their counsel were watching closely to see how many initiatives involving oil and gas

matters were filed by the April 4, 2014 3:00 p.m. deadline, in order to allocate scarce preparation time in advance of the April 16, 2014 Title Board hearing accordingly.

B. The Initiative Impermissibly Contains Several Separate and Distinct Subjects in Violation of the Constitutional and Statutory Single Subject Requirement.

Under article V, section 1(5.5) of the Colorado constitution and section 1-40-106.5, C.R.S., proposed ballot measures must contain only a single subject. "[T]he Board may not set the titles of a proposed Initiative, or submit it to the voters, if the Initiative contains multiple subjects." *Aisenberg v. Campbell (In re Title, Ballot Title & Submission Clause 1990-2000 #104)*, 987 P.2d 249, 253 (Colo. 2000).

Initiative #121 contains at least five separate subjects, in violation of article V, section 1(5.5) of the Colorado constitution and section 1-40-106.5, C.R.S. The Initiative (1) renders local governments, who suspend, ban or effectively prohibit the production of oil and gas or the permitting of oil and gas development, ineligible to receive oil and gas revenues administered by the state that are derived from those activities; (2) prohibits and constrains the General Assembly, the Executive Department, and other state agencies from allocating other sources of state revenues to local governments who suspend, ban or effectively prohibit the production of oil and gas or permitting of oil and gas development; (3) prohibits the organization or use of special districts under prescribed circumstances; (4) penalizes special districts whose boundaries lie within a local government which prohibited the production of oil and gas or permitting of oil and gas development, even though the special district itself did not prohibit the production of oil and gas or permitting of oil and gas development; and (5) requires the redistribution of oil and gas revenues denied to local governments who prohibit oil and gas development, to other local governments allowing oil and gas development.

Initiative #121 sets up the kind of log rolling that the voters intended to prevent when adopting in 1994 the single-subject constitutional requirement. Colo. Const., art. V, §1(5.5). The prohibition against multiple subjects "discourages placing voters in the position of voting for some matter they do not support to enact that which they do support." *Howe v Brown (In re Title, Ballot Title & Submission Clause 2009-2010, # 91)*, 235 P.3d 1071, 1079 (Colo. 2010). For example, an elector going to the polls in the upcoming general election might favor denying severance tax revenues to communities who prohibit oil and gas development, while being opposed to depriving local governments of other sources of state revenues to ensure that basic services in their communities are maintained.

C. The Ballot Title and Submission Clause Is Misleading, and Does Not Correctly and Fairly Express Its True Intent and Meaning.

The title of the Initiative is misleading and does not correctly and fairly express the initiatives' true intent and meaning. Section 1-40-106(3)(b), C.R.S. provides:

In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a "yes" or "no" vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and

fairly express the true intent and meaning thereof, together with the ballot title and submission clause. . . .

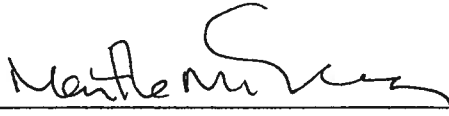
The title of Initiative #121 misleads the voters by failing to inform them that local governments who are denied severance tax revenues may not receive other state revenues to offset those losses. The title of Initiative #121 is also misleading because it fails to inform voters that special districts will be deprived of revenues if a local government is within its jurisdiction and such local government enacted a prohibition or ban of oil and gas development, even though the special district has not enacted any oil and gas ban or prohibition. The title does not enable voters to make an informed choice because it does not correctly and fairly express its true intent and meaning.

III. CONCLUSION

Based on the foregoing, Ms. Leahy and Mr. Diamond request a rehearing of the Title Board for Initiative 2013-2014 #121, because the measure was untimely filed, the initiative contains multiple subjects, the title is misleading to voters, and fails to fairly express the initiative's true meaning and intent. As a result, the Title Board lacks jurisdiction to set a title and should reject the measure in its entirety.

Respectfully submitted this 23rd day of April, 2014.

HEIZER PAUL LLP

By: 

Martha M. Tierney, Atty Reg. No. 27521

Edward T. Ramey, Atty Reg. No. 6748

Heizer Paul LLP

2401 15th Street, Suite 300

Denver, Colorado 80202

Phone Number: (303) 595-4747

FAX Number: (303) 595-4750

E-mail: mtierney@hpfirm.com;

eramey@hpfirm.com

ATTORNEYS FOR CAITLIN ANNE LEAHY
AND GREGORY M. DIAMOND

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 23rd day of April, 2014, a true and correct copy of **MOTION FOR REHEARING ON PROPOSED INITIATIVE 2013-2014 #121** was filed and served via email or U.S. mail, postage prepaid, to the following:

Jerry Sonnenberg
4465 CR 63
Sterling, CO 80751

Frank McNulty
PO Box 630681
Highlands Ranch, CO 80163

Jon Anderson
Holland & Hart
PO Box 8749
Denver, CO 80201-6749
Email: jmanderson@hollandhart.com
Attorneys for Proponents

