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COLORADO TITLE SETTING BOARD

Colorado Secretary of State

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**IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE  
FOR PROPOSED INITIATIVE 2013-2014 #123**

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**MOTION FOR REHEARING ON PROPOSED INITIATIVE 2013-2014 #123**

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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 #123 ("Initiative #123") 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 #123:

Shall there be an amendment to the Colorado constitution stating that local governments may enact and enforce local laws and regulations concerning oil and gas development or operations that are no more restrictive than, and do not conflict with, state law, except that local governments may assess an oil and gas impact fee to mitigate the direct costs associated with oil and gas development and operations?

**II. GROUND FOR REHEARING**

**A. 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 #123 contains at least three 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) prohibits and constrains local governments from exercising their existing authority to regulate some aspects of oil and gas development; (2) mandates that local laws may not be more restrictive than or conflict with laws and regulations adopted at the state level; and (3) creates a local government oil and gas impact fee.

Initiative #123 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). An elector going to the polls in the upcoming general election might favor a local government impact fee while being opposed to depriving local governments of their historical authority to regulate land use, surface impacts, and health, safety and welfare impacts of oil and gas development differently than the General Assembly or state administrative agencies, such as the Colorado Oil and Gas Conservation Commission.

**B. The Ballot Title and Submission Clause Is Misleading, Conflicts with Titles Previously Set, and Fails to Describe the Purpose of the Initiative.**

**1. The Initiative Conflicts with Titles Previously Set By Different Proponents.**

Pursuant to section 1-40-106(3)(b), ballot titles "shall not conflict with those selected for any petition previously filed for the same election." "Such a conflict exists where the titles fail to accurately reflect the distinctions between the measures, and voters comparing the titles would not be able to distinguish between the two proposed measures." *Paredes v. Corry (In re Title, Ballot Title, & Submission Clause 2007-2008 #61)*, 184 P.3d 747, 752 (Colo. 2008).

Here, Initiative #123 conflicts with the ballot titles set for initiatives 2013-2014 #90, #91, #92 and #93. The latter initiatives, all sponsored by the same two proponents who have committed to placing only one of the four variations on the 2014 ballot, authorize local governments to regulate oil and gas development in their communities in a manner that is more restrictive and more protective than laws set at the state level. In direct conflict with initiatives 2013-2014 #90-#93, Initiative #123 expressly prohibits local governments from regulating oil and gas development in a manner that is more restrictive than state law.

**2. The Initiative 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 #123 misleads the voters by indicating that it is creating a right in local governments to regulate oil and gas operations. The title states that "local governments may enact and enforce local laws and regulations." This title is misleading because it implies that

Initiative #123 is creating for the first time the authority of local governments to regulate oil and gas operations.

To the contrary, Colorado local governments have long held “a legally protected interest in enacting and enforcing their land use regulations governing the surface effects of oil and gas operations.” *Board of County Com'rs, La Plata County v. Colorado Oil and Gas Conservation Com'n*, 81 P.3d 1119, 1123 (Colo. App. 2003). This interest “emanates from the authority granted to counties by state statutes permitting them to enact and enforce land use regulations, as well as from the judicial determination in *Board of County Com'rs, La Plata County v. Bowen/Edwards Associates, Inc.*, 830 P.2d 1045 (Colo. 1992), that, absent an operational conflict between state interests and local interests, local regulations should be given effect.” *Id.*; *See also Voss v. Lundvall Bros., Inc.*, 830 P.2d 1061, 1067 (Colo.1992) (home rule city could enact land use regulations, and if the regulations did not frustrate and could be harmonized with development and production of oil and gas in a manner consistent with stated goals of Oil and Gas Conservation Act, city's regulations should be given effect).

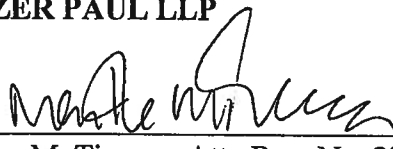
In fact, rather than creating initial authority for local governments to regulate oil and gas operations, the true intent of Initiative #123 is to create new limits on current local government authority by substituting the Colorado Supreme Court’s existing preemption standard for a new standard mandating that a local government requirement can be no more restrictive than state requirements.

**III. CONCLUSION**

Based on the foregoing, Ms. Leahy and Mr. Diamond request a rehearing of the Title Board for Initiative 2013-2014 #123, because 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 23<sup>rd</sup> day of April, 2014.

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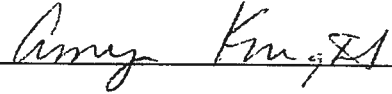
**CERTIFICATE OF SERVICE**

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 #123** was filed and served via email or U.S. mail, postage prepaid, to the following:

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