

APR 24 2014

Colorado Secretary of State

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Anthony Milo, Objector

Via email forwarded  
by Mark Grueskin  
6:22 P.M. S.WARD

vs.

Peter Coulter and Lisa Brumfiel, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2013-2014 #129

Anthony Milo, through legal counsel, Foster Graham Milstein & Calisher, LLP, objects to the Title Board’s title and ballot title and submission clause set for Initiative 2013-14 #129 (“Definition of Fee”).

On April 17, 2014, the Board set the following ballot title and submission clause:

Shall there be an amendment to the Colorado constitution establishing a definition of a “fee” as a voluntarily incurred governmental charge in exchange for a specific benefit conferred on the payer, which fee should reasonably approximate the payer’s fair share of the costs incurred by the government in providing the benefit?

ADVISORY GROUNDS FOR RECONSIDERATION

A. The Board Lacks Jurisdiction to Set a Title for #129 Under Article V, § 1(5.5) of the Colorado Constitution Because the Measure Contains Multiple Subjects

1. The measure is unconstitutional because it contains more than one subject. Colo. Const., Art. V, § 1(5.5); *see also* C.R.S. § 1-40-106.5. A measure violates the single-subject requirement when it relates to more than one subject and has at least two distinct and separate purposes which are not dependent upon or connected with each other. *See In re Initiative No. 25*, 974 P.2d 458, 463 (Colo. 1999). The measure purports to have broad application across not only the Colorado constitution, but all areas of Colorado law, including “Colorado revised statutes, codes, directives and all public Colorado legal documents.”
2. The Board cannot set title because it cannot possibly comprehend the breadth of the measure’s application to “all public Colorado legal documents” sufficient to state a single subject. *See In re Initiative No. 25*, 974 P.2d 458, 463 (Colo. 1999) (“if the Board cannot comprehend a proposed initiative sufficiently to state its single subject clearly in the title, it necessarily follows that the initiative cannot be forwarded to the voters”).

3. The measure violates the single-subject requirement because it addresses both the meaning of fees at the point they are imposed (ln. 15-19) as well as the hidden subject of the use of those fee revenues once held by a governmental entity (ln. 32-34), by expressly superseding *Barber v. Ritter*, 196 P.3d 238 (Colo. 2008).

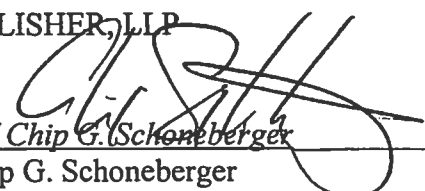
**B. Even if the Board has Jurisdiction to Set Title for #129, the Title it Set is Misleading and Not Reflective of the Proponents' Intent**

1. The Board must set a title that clearly, accurately, and fairly characterizes the proposed initiative. *In re Initiative No. 200A*, 992 P.2d 27, 30 (Colo. 2000).
  - a. The title fails to disclose that it applies to the "Colorado Revised Statutes."
  - b. The title fails to disclose that it applies to "codes."
  - c. The title fails to disclose that it applies to "directives."
  - d. The title fails to disclose that it applies to "all public Colorado legal documents."
  - e. The title fails to disclose that it precludes consideration of "ancillary and/or extraneous benefits, as those terms are defined by Black's Law Dictionary."
  - f. The title fails to disclose that it supercedes "conflicting constitutional, state statutory, court findings of fact, local charter, ordinance, or resolution, and other state and local provisions."
  - g. The title fails to disclose that it "supercede[s] the Colorado Supreme Courts Findings of Fact in *Barber v. Ritter*."

Respectfully submitted this 23rd day of April, 2014.

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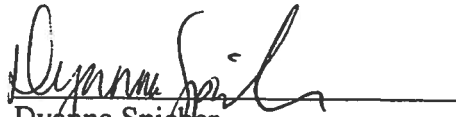
  
/s/ Chip G. Schoneberger  
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**CERTIFICATE OF SERVICE**

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2013-2014 #129** was sent this day, April 23, 2014, via U.S. First Class Mail, postage pre-paid to the proponents at:

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Dyanna Spigler