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DEC 11 2013

ELECTIONS
SECRETARY OF STATE

4:20

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

MARC ARNUSCH and MARY LOU CHAPMAN, Objectors

vs.

LARRY COOPER and CHERYL GRAY, Proponents.

MOTION FOR REHEARING

Marc Arnusch and Mary Lou Chapman, through their legal counsel, Recht Kornfeld P.C., objects to the Title Board's title and ballot title and submission clause set for Initiative 2013-14 #48 ("Labeling Genetically Modified Food").

On December 4, 2013, the Board set the following ballot title and submission clause:

Shall there be a change to the Colorado Revised Statutes concerning labeling of genetically modified food; and, in connection therewith, requiring that the words, "Produced With Genetic Engineering" appear in a clear and conspicuous manner on the label starting on July 1, 2016; exempting certain food that is not packaged for retail sale, alcoholic beverages, animal food, and medically prescribed food; authorizing the Colorado department of public health and environment to regulate the labeling of genetically modified food; and specifying that no private right of action is created in connection with the labeling requirements?

GROUND FOR RECONSIDERATION

A. Contrary to the statutory requirements for a ballot title that is not confusing, not misleading, and reflective of the intent of the proponents, C.R.S. §§ 1-40-106, -107, the Board has erred by setting titles that do not reveal that the measure:

- (1) Requires, rather than authorizes, state agency regulation of food labeling;
- (2) Does not create a blanket prohibition against private rights of action;
- (3) Addresses the subject of "labeling food" rather than just "labeling of genetically modified food";
- (4) Addresses the subject of labeling of "some" rather than the entire sphere of "genetically modified food";

- (5) Exempts from the measure's labeling requirements all restaurant food;
- (6) Exempts from labeling requirements any animal products from animals that were given food, injections, or drugs that include genetically modified organisms;
- (7) Exempts from the measure's labeling requirements all animal food, whether for livestock or domestic animals;
- (8) Exempts from labeling requirements certain foods, but not others, that contain or have been affected by genetically modified processing aids;
- (9) Exempts against allegation of misbranding food sellers who (i) lack knowledge that seeds or foods were derived using genetic engineering and (ii) so certify at time of delivery;
- (10) Does not immunize retailers, manufacturers, or distributors against private rights of action that are not related to conformance to labeling requirements;
- (11) Extends immunity against private rights of action to advertising as well as sale and labeling of food;
- (12) Fails to indicate that raw agricultural commodities are not required to be labeled at the point of sale but are subject to signage requirements reflecting information provided by manufacturers and distributors;
- (13) Requires labeling by raw agricultural commodity manufacturers;
- (14) Requires raw agricultural commodity distributors to maintain labels for retailers;
- (15) Redefines existing definition of "food" by eliminating many food components and chewing gum for purposes of this labeling;
- (16) Fails to disclose that a food is considered to be genetically modified if it contains any ingredient, component, or other article that is genetically engineered;
- (17) Fails to disclose that a food is considered to be genetically modified if it has been treated with any genetically engineered material;
- (18) Confuses voters by using two different terms ("genetically modified" and "genetic engineering") to describe the same food(s).

B. The label's wording, quoted in the title, is not a central element of the measure.

RESPECTFULLY SUBMITTED this 11th day of December, 2013.

RECHT KORNFELD, P.C.



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CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING** of Marc Arnusch and Mary Lou Chapman was sent this day, December 11, 2013, via first class U.S. mail, postage pre-paid to the proponents and their counsel at:

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