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Colorado Secretary of State

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BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE
2013-2014 #75

MOTION FOR REHEARING

Registered electors, Mizraim S. Cordero and Scott Prestidge, through their legal counsel, Hogan Lovells US LLP, request a rehearing of the Title Board for Initiative 2013-2014 #75 (“Right to Local Self-Government”). 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:

On March 19, 2014, the Board set the title as follows:

An amendment to the Colorado constitution concerning a right to local self-government, and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish and protect fundamental rights of individuals, communities, and nature and the power to define or eliminate the rights and powers of corporations or business entities to prevent them from interfering with those fundamental rights; declaring that such local laws are not subject to preemption by any federal, state, or international laws so long as the local laws do not weaken any fundamental rights or protections for individuals, communities, or nature found in federal, state, or international law.

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

Shall there be an amendment to the Colorado constitution concerning a right to local self-government, and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish and protect fundamental rights of individuals, communities, and nature and the power to define or eliminate the rights and powers of corporations or business entities to prevent them from interfering with those fundamental rights; declaring that such local laws are not subject to preemption by any federal, state, or international laws so long as the local laws do not weaken any fundamental rights or protections for individuals, communities, or nature found in federal, state, or international law?

GROUND FOR RECONSIDERATION

A. The Initiative Impermissibly Contains Multiple Subjects.

Contrary to the requirement that every constitutional amendment proposed by initiative be limited to a single subject, which shall be clearly expressed in its title (Colo. Const. art. V.,

§ 1(5.5); C.R.S. § 1-40-106.5), the Board set title for initiative #75 despite the fact that it contains multiple, distinct and separate purposes that are not dependent upon or connected with each other. Specifically, under the guise of “self-government” the initiative actually includes the following several, unrelated subjects:

- (1) Establishing a new, inherent and inalienable individual right to local self-government within article II of the Colorado Constitution (#75, § (1));
- (2) Empowering local governments to enact laws “establishing the fundamental rights of individuals, communities, and nature” (#75, § 2(a));
- (3) Expanding the authority of local governments to enact laws protecting health, safety and welfare that are not subject to section 6 of article XX of the Colorado Constitution or preemption by any federal, state, or international laws (#75, § 3); and
- (4) Creating a solitary, lesser-protected class for corporations and business entities by granting local governments the authority to redefine, alter or eliminate their rights and powers, and effectively changing the legal status of corporations and business entities operating in Colorado (#75, § 2(b)).

Each of these subjects is not interdependent or connected to the other. The Title Board therefore lacks jurisdiction to set title and title setting should be denied.

B. The Title and Submission Clause is Confusing, Misleading, and Does Not Reflect the Intent of the Proponents.

Contrary to the constitutional and statutory requirements for ballot titles as set forth in Colo. Const. art. V, § 1 and C.R.S. §§ 1-40-106, 107, the Board set a title and submission clause that is confusing, misleading, and not reflective of the proponents’ intent insofar as it:

- (1) Provides no definition of what the “right to local self-government” means;
- (2) Provides no definition of the “fundamental rights” local governments are authorized to establish;
- (3) Provides no definition or clarity as to how the “fundamental rights” established by local governments for “individuals, communities and nature” differs or relates to the individual “right of local self-government” or other rights guaranteed by the Colorado and United States constitutions;
- (4) Incorrectly suggests to voters that “communities” and “nature” are capable of holding individual and/or fundamental rights that are independently protected and enforceable under the law;

- (5) Fails to inform voters that the initiative eviscerates the distinction between statutory and home-rule municipalities by effectively granting home-rule powers to all towns, cities, counties and other municipalities;
- (6) Confusingly interchanges the phrases “protect fundamental rights” with “fundamental rights or protections” without defining whether “protections” means something different or in addition to “fundamental rights”;
- (7) Misleadingly suggests that the initiative grants local governments absolute immunity from preemption, but fails to inform voters that local laws could still be preempted by federal law;
- (8) By using the term “weaken any fundamental rights or protections...” the submission clause confusingly conflates the intent of the initiative to subject local laws to preemption if such laws either “restrict fundamental rights” or “weaken protections”;
- (9) Provides conflicting statements as to who holds the “right to local self-government,” stating on the one hand that it is an inherent right of “the people,” but may also be a right held by “individuals, communities, and nature”;
- (10) Fails to clearly identify *who* is granted “the power to enact laws” and “define or eliminate the rights and powers of corporations” – “the people,” or “counties and municipalities” (i.e., are these powers vested in legal residents of a particular county or municipality, citizens of the state, or local governments?);
- (11) Misleads and confuses voters, and misrepresents the intent of the proponents by stating in the submission clause that power is given to enact laws protecting “fundamental rights” when the initiative actually states that the power is to enact laws protecting “health, safety and welfare”; and
- (12) Purports to expand local government authority to establish laws protecting health, safety and welfare notwithstanding the fact that through its constitutional and statutory police powers, such authority already exists.

Based on the foregoing, Mr. Cordero and Mr. Prestidge request a re-hearing of the Title Board for Initiative 2013-2014 #75. The initiative is incapable of being expressed in a single subject that clearly reflects the intent of the proponents and therefore the Title Board lacks jurisdiction to set a title and should reject the measure. Alternatively, Mr. Cordero and Mr. Prestidge respectfully request that the Title Board amend the title consistent with the concerns set forth above.

Respectfully submitted this 26th day of March, 2014 by:

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