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Colorado Secretary of State

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COLORADO TITLE SETTING BOARD

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

MOTION FOR REHEARING

On behalf of Stuart Sanderson, a registered elector of the State of Colorado, the undersigned counsel hereby submits to the Title Board this Motion for Rehearing on proposed Initiative 2013-2014 #75 (“Measure”) and as grounds therefore states as follows:

I. THE MEASURE IMPERMISSIBLY CONTAINS SEVERAL SEPARATE AND DISTINCT SUBJECTS IN VIOLATION OF THE CONSTITUTIONAL AND STATUTORY SINGLE-SUBJECT REQUIREMENT.

Article V, section 1(5.5) of the Colorado constitution and section 1-40-106.5, C.R.S., require proposed ballot measures to contain 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.

Although the stated single subject of this Measure is the declaration of a person’s “inherent and inalienable right to local self-government,” as secured within Colorado’s constitutional bill of rights, several other separate and distinct subjects are impermissibly woven into the Measure. (Proposed Initiative 2013-2014 #75 (“Init. #75”), § 1.)

Each of the following is a subject that is of such significance and magnitude that none can be considered merely incidental to the Measure’s stated single subject of declaring and securing the right of individuals in Colorado to “local self-government.” Indeed, each of the following subjects is a subject in its own right:

(a) Granting counties, cities, towns, and other municipalities the power to enact laws protecting “health, safety, and welfare” (Init. #75, § 2(a));

(b) Granting counties, cities, towns, and other municipalities the power to enact laws that establish “fundamental rights of individuals, their communities, and nature” (Init. #75, § 2(a));

(c) Granting counties, cities, towns, and other municipalities the power to use “prohibitions and other means” to protect “fundamental rights” (Init. #75, § 2(a));

(d) Granting counties, cities, towns, and other municipalities the power to enact laws “establishing, defining, altering, or eliminating the rights, powers, and duties of corporations and other business entities” (Init. #75, § 2(b));

(e) Declaring that local laws enacted under the Measure are not preempted by international, federal, or state law (Init. #75, § 3);

(f) Modifying the reach of Colorado’s constitutional municipal home rule provisions (Init. #75, § 3);

(g) Prohibiting counties, cities, towns, and other municipalities from restricting any “fundamental rights” that are contained in the Colorado constitution, the United States Constitution, or international law (Init. #75, § 3(a)); and

(h) Prohibiting counties, cities, towns, and other municipalities from weakening “protections for individuals, their communities, or nature provided by state, federal, or international law” (Init. #75, § 3(b)).

Because the Measure contains these multiple, distinct subjects, it violates the constitutional and statutory single-subject requirement, and thus fails to meet the jurisdictional threshold for the Board to set a title.

II. THE MEASURE IS SO VAGUE THAT IT IS IMPOSSIBLE TO SET A TITLE THAT ACCURATELY REFLECTS THE TRUE PURPOSE OF THE MEASURE.

The Measure purports to declare and secure the right of Coloradans to “local self-government in each county, city, town, and other municipality” (Init. #75, § 1). However, the Measure is fatally ambiguous with respect to its key provisions and, as outlined above, contains multiple subjects. “In setting title, the title board shall consider the public confusion that might be caused by misleading titles.” *Aisenberg*, 987 P.2d at 254. As outlined below, the Measure here is so vague that the Board is precluded from setting an adequate title pursuant to section 1-40-106(3)(c), C.R.S.:

(a) The Measure professes to grant individuals the right to “local self-government,” but also appears to confer certain related powers to counties, cities, towns, and other municipalities (Init. #75, § 1). The right would be added to Colorado’s bill of rights, and it is unclear whether or how individuals would have the power or capacity to exercise it. Instead, it appears the rights of individuals vis-à-vis their counties, cities, towns, and other municipalities would remain unchanged. The language of the Measure is so platitudinous that no title can accurately describe how a declaration of the right to “local self-government” would meaningfully affect the current functioning of local government.

(b) The Measure simultaneously permits and prohibits the enactment of laws concerning “fundamental rights” by counties, cities, towns, and other municipalities. For instance, while the Measure authorizes counties, cities, towns, and other municipalities to enact local laws that protect health, safety and welfare “without limitation” (Init. #75, § 2), the Measure at the same time prohibits counties, cities, towns, and other municipalities from weakening any state, federal, or international “protections” (Init. #75, § 3(b)). Nor does the Measure define the terms “fundamental rights” or “protections.” Consequently, no title can accurately reflect the manner or degree by which the Measure would expand the authority of local government to create, preserve, or maintain the “fundamental rights of” or “protections for individuals, their communities, and nature.”

(c) The Measure gives counties, cities, towns, and other municipalities the power “to enact local laws protecting health, safety, and welfare” (Init. #75, § 2(a)). The Measure further provides that such local laws “shall not be subject to preemption by international, federal, or state laws” (Init. #75, § 3). If counties, cities, towns, and other municipalities are permitted to protect health, safety, and welfare, it is unclear whether the state would retain plenary authority over issues of statewide concern. As to federal and international law, it is unlikely that insulation from preemption can be achieved. No title can accurately reflect the type or kind of local laws that will survive international, federal, or state preemption challenges.

(d) The Measure surreptitiously authorizes counties, cities, towns, and other municipalities to regulate business entities. Buried within the language of the Measure, counties, cities, towns, and other municipalities are given the power to enact laws “establishing, defining, altering, or eliminating the rights, powers, and duties of corporations and other business entities” (Init. #75, § 2(b)). The power for such broad regulation of business entities by local governments under the pretext of protecting undefined “fundamental rights” would surprise voters in a way that no title can accurately reflect.

(e) The Measure attempts to extend undefined “fundamental rights” to undefined “communities” and undefined “nature” (Init. #75, §§ 1, 2(a)–(b), 3(a)–(b)). The Measure does not distinguish between “fundamental rights” accorded to “individuals, their communities, or nature,” and it is unclear what results if such rights conflict. Similarly, the Measure is silent as to how and why the “fundamental rights of individuals, their communities, and nature” relate to the right of individuals to “local self-government.” No title can accurately define the relationship among “individuals,” “communities,” and “nature”; whether “fundamental rights” can even be held by “communities” or “nature”; or why the right of “local self-government” is a right held by “individuals” but not by “communities” or “nature.”

In these ways, the language of the Measure is so vague that no title can correctly and fairly express the true purpose of the Measure. This ambiguity renders the Board without jurisdiction to set a title.

III. THE BALLOT TITLE AND SUBMISSION CLAUSE AS DRAFTED FAIL TO DESCRIBE IMPORTANT ASPECTS OF THE MEASURE AND CONTAIN IMPERMISSIBLE CATCH PHRASES IN WAYS THAT ARE MISLEADING AND CONFUSING.

Pursuant to section 1-40-106(3)(a), a measure’s ballot title and submission clause must “correctly and fairly express the true intent and meaning” of the measure. Section 1-40-106(3)(a) also requires a measure’s title and submission clause to be sufficiently clear and brief. “[A] material omission can create misleading titles.” *Garcia v. Chavez (In re Title, Ballot and Submission Clause 1999–2000 #258A)*, 4 P.3d 1094, 1098 (Colo. 2000). Titles are also prohibited from containing a “catch phrase” that unfairly prejudices the proposal in its favor; this contravenes section 1-40-106(3)(a).” *Id.* Here, the Measure’s title was set 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 and 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 Measure's ballot title and submission clause was set 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 and 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?

As drafted, the title and ballot title and submission clause are misleading and confusing because they fail to describe important aspects of the Measure and contain impermissible catch phrases:

(a) The Measure's title and ballot title and submission clause improperly omit the Measure's provision concerning the power of counties, cities, towns, and other municipalities "to enact local laws protecting health, safety, and welfare" (Init. #75, § 2(a)). This is a key provision of the Measure because it is through the right to enact these laws that the Measure gives counties, cities, towns, and other municipalities the power to carry out the right of "local self-government."

(b) The Measure's title and ballot title and submission clause also improperly omits the Measure's provision that local laws adopted pursuant to the Measure shall not "be subject to limitation pursuant to section 6 of article XX of this constitution," which refers to the Colorado constitution's municipal home rule provisions (Init. #75, § 3). This is a key provision of the Measure because its purpose is to expand the authority of all counties, cities, towns, and other municipalities in service of the right to "local self-government" and it purports to afford statutory cities and counties – which are creatures of statute – the same quantum of power as home rule cities.

(c) The catch phrase "inherent right to local self-government" is a slogan that is likely to elicit support for the Measure without public understanding that the Measure confers powers associated with this "inherent right" to local governments.

(d) Use of the phrase "individuals, communities, and nature" without definition forms a catch phrase that is also likely to elicit support for the Measure without public understanding of who or what is affected by the Measure.

(e) The undefined terms "fundamental rights" and "protections" are catch phrases that are likely to prejudice the Measure in its favor by virtue of the words' appeal to civic

emotion without contributing to public understanding of the effect of the Measure on the functioning of local government or on the rights of citizens.

(f) The catch phrase “eliminate the rights and powers of corporations or business entities” is a slogan that is also likely to prejudice the Measure in its favor by provoking political emotion that will distract voters from the effects of the Measure.

(g) The title and ballot title and submission clause misleadingly declare that local laws will not be subject to preemption by federal or international law so long as “fundamental rights or protections” are not “weakened.”

For all these reasons, the title and ballot title and submission clause, as drafted, do not conform to the statutory requirements of section 1-40-106(3)(c) or to the case law construing the statute.

IV. REQUEST FOR RELIEF TO GRANT THE MOTION FOR REHEARING AND TO REJECT THE MEASURE FOR LACK OF JURISDICTION OR, ALTERNATIVELY, TO AMEND THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE.

Because the proposed Measure contains multiple subjects and because the Measure is so vague that it is impossible to set a title that accurately reflects the Measure’s true purpose, the Board lacks jurisdiction to set a title. To the extent the Board determines it has jurisdiction to set a title, the title and ballot title and submission clause, as drafted, fail to describe important aspects of the Measure in ways that are misleading and confusing, and contain impermissible catch phrases.

Accordingly and pursuant to section 1-40-107(1), C.R.S., the petitioner-opponent requests that his Motion for Rehearing be granted and that the Board reject the Measure for lack of jurisdiction or, alternatively, amend the title and ballot title and submission clause consistent with the concerns set forth above.

Respectfully submitted this 26th day of March, 2014.



Sarah M. Clark, Atty. Reg. #39367
Michael F. Feeley, Atty. Reg. #12266
Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, Colorado 80202
(303) 223-1100 tel
(303) 223-1111 fax
sclark@bhfs.com
mfeeley@bhfs.com