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COLORADO TITLE SETTING BOARD

Colorado Secretary of State

S. WARD 3:38 P.M.

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IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR PROPOSED INITIATIVE 2013-2014 #85

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**MOTION FOR REHEARING ON PROPOSED INITIATIVE 2013-2014 #85**

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On behalf of Mizraim Cordero and Scott Prestidge, 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 #85 ("Initiative"), 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.**

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).

As reflected in the language of the Initiative, as well as in the colloquy between the proponents' attorney and the Board at the April 3 hearing, the Initiative impermissibly weaves together the following multiple subjects:

1. Overriding current statewide setback rules with an expanded statewide setback from all "occupied structures," as that term is defined in the Initiative (§ 2);
2. Depriving property owners of the rights and protections granted under sections 14 and 15 of the Colorado constitution (§ 3);
3. Limiting the use of hydraulic fracturing in "oil and gas operations," as that term is defined in the Initiative (§ 2); and
4. Authorizing a homeowner to waive a setback as to the homeowner's home (§ 2).

These are separate and distinct subjects that violate the constitutional and statutory single-subject requirement. The Initiative thus fails to meet the jurisdictional threshold for the Board to set a title and, on rehearing, title setting should be denied.

**II. THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE AS DRAFTED CONTAIN IMPERMISSIBLE CATCH PHRASES AND FAIL TO DESCRIBE THE PURPOSE OF THE INITIATIVE.**

In the alternative, the title and ballot title and submission clause are misleading and confusing because they contain impermissible catch phrases and fail to fairly express the true intent and meaning of the Initiative.

Pursuant to section 1-40-106(3)(b), a proposed initiative's title and ballot title and submission clause must "correctly and fairly express the true intent and meaning" of the proposed initiative." The statute also requires a proposed initiative's title and ballot 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 because such catch phrases contravene section 1-40-106(3). *Id.*

Here, the Initiative's title was set as follows:

An amendment to the Colorado constitution concerning a statewide setback requirement for new oil and gas wells, and, in connection therewith, requiring any new oil and gas well, including those using hydraulic fracturing, to be located at least 1,500 feet from the nearest occupied structure; authorizing a homeowner to waive the setback for the homeowner's home; and establishing that the statewide setback is not a taking of private property requiring compensation under the Colorado constitution.

The Initiative's ballot title and submission clause was set as follows:

Shall there be an amendment to the Colorado constitution concerning a statewide setback requirement for new oil and gas wells, and, in connection therewith, requiring any new oil and gas well, including those using hydraulic fracturing, to be located at least 1,500 feet from the nearest occupied structure; authorizing a homeowner to waive the setback for the homeowner's home; and establishing that the statewide setback is not a taking of private property requiring compensation under the Colorado constitution?

For the following reasons, the title and ballot title and submission clause are misleading and confusing:

1. The catch phrase "statewide setback" has an alliterative quality that masks its true, plain language meaning in a way that is likely to elicit support for the Initiative without contributing to public understanding of the effect of the Initiative;
2. Use of the term "new" is a vague catch phrase that is likely to prejudice the Initiative in its favor without contributing to public understanding of the reach of the Initiative;
3. The catch phrase "hydraulic fracturing" is politically charged and its inclusion is likely to appeal to voter emotion without contributing to public understanding of the relationship between the Initiative and hydraulic fracturing;

4. The title and ballot title and submission clause fail to describe the effect of the Initiative as an override of current statewide setback rules; and
5. The title and ballot title and submission clause fail to describe the type of oil and gas wells affected by the Initiative.

Accordingly, the title and ballot title and submission cause, as drafted, do not conform to the statutory requirements of section 1-40-106(3)(c) or to the case law construing the statute and require amendment consistent with these concerns.

**III. 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 Initiative contains multiple subjects, 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, contain impermissible catch phrases and fail to describe the purpose of the measure in ways that are misleading and confusing.

Accordingly and pursuant to section 1-40-107(1), C.R.S., the objectors request that this Motion for Rehearing be granted and that the Board reject the Initiative 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 10th day of April, 2014.



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