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Colorado Secretary of State

S.WARD 3:40P.M.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE  
2013-2014 #89

**MOTION FOR REHEARING**

Registered electors, Mizraim S. Cordero and Scott Prestidge, through their legal counsel, Ryley Carlock & Applewhite, request a rehearing of the Title Board for Initiative 2013-2014 No. 89. 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:

**TITLE AND SUBMISSION CLAUSE**

On April 3, 2014, the Title Board designated the title as follows:

An amendment to the Colorado constitution concerning the creation of a public trust over Colorado's environment, and, in connection therewith, declaring that Colorado's environment is the common property of all Coloradans; specifying that the environment includes clean air, pure water, and natural and scenic value; requiring state and local governments, as trustees, to conserve the environment; and declaring that if state or local laws conflict the more restrictive law or regulation governs.

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

Shall there be an amendment to the Colorado constitution concerning the creation of a public trust over Colorado's environment, and, in connection therewith, declaring that Colorado's environment is the common property of all Coloradans; specifying that the environment includes clean air, pure water, and natural and scenic values; requiring state and local governments, as trustees, to conserve the environment; and declaring that if state and local laws conflict the more restrictive law or regulation governs?

**GROUND FOR RECONSIDERATION**

**I. THE INITIATIVE IMPERMISSIBLY CONTAINS MULTIPLE SUBJECTS IN VIOLATION OF THE COLORADO CONSTITUTION AND STATUTES.**

The Colorado Constitution and statutes require that each initiative that proposes an amendment to the Constitution shall contain only one subject and that subject shall be clearly expressed in the title. *See* Colo. Const. art. V., § 1(5.5); C.R.S. § 1-40-106.5; *In re Title, Ballot Title, Submission Clause*, 898 P.2d 1076 (Colo. 1995). The Board set title for initiative No. 89 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 "environmental rights" the initiative actually includes the following several, unrelated subjects:

- (1) Establishes a public trust in the environment as the common property of the people of Colorado (#89, §1);
- (2) Establishes the environment as common property of all the citizens of Colorado (#89, §1);
- (3) Establishes a new preemption order of authority whereby local governments may preempt statutes and regulation enacted or promulgated by the state government (#89, §3);
- (4) Implies a preemption of federal clean air and clean water statutes by local governments.
- (5) Establishes a new legal doctrine of construction, separate and apart from preemption that requires, most likely, the courts to determine whether a local ordinance or state statute is more restrictive (#89, §3).

These subjects are not connected or interdependent and therefore the Title Board lacks jurisdiction to set a title.

**II. THE INITIATIVE'S PROVISIONS ARE SO VAGUE THE BOARD CANNOT SET A TITLE THAT ENCOMPASSES AND REFLECTS THE PURPOSE OF THE PROPOSAL.**

Colorado Revised Statutes §1-40-106(3)(c) requires the ballot title to accurately reflect the subject matter of an initiative to avoid confusion. The Title set for initiative 89 violates this statutory provision in the following ways:

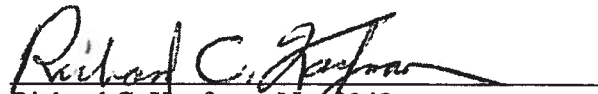
- (1) The measure purports to establish the "environment as the common property of all Coloradans." However, the measure does not clearly define the terms "common property" and will lead to confusion because the public trust doctrine has traditionally been applied to lands submerged beneath tidal and navigable waterways.
- (2) The measure purports to assign the state and local governments as trustees of the "environment" but the title does not describe the rights each citizen of the state may have to enforce this proposal.
- (3) In paragraphs (1) and (2) of the proposal, the terms "natural and scenic values" are utilized and in paragraph (1) described as "fundamental," as well as, "clean air" and "pure water." The title does not include the word "fundamental" which will lead to misinformation and confusion as to which constitutional right takes precedence over others and whether "fundamental" ascribes more or less legal importance to these proposed rights as to other constitutional rights. The term "fundamental" is undefined and amorphous.

(4) In paragraph (2) of the proposal, the term "conserve" is so broad it will lead to confusion among voters as to what the state and local governments are to conserve.

The language of the measure is so vague that no title can correctly and fairly express the true purpose of the measure. Therefore, the Title is confusing and does not meet the requirements of §1-40-106(3)(c).

Respectfully submitted this 10th day of April, 2014 by:

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