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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 #93

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 #93. 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 Board set the title as follows:

An amendment to the Colorado constitution concerning local government regulation of oil and gas development, and, in connection therewith, allowing local governments to prohibit or limit oil and gas development, including hydraulic fracturing; authorizing local laws and regulations that are more restrictive and protective of a community's health, safety, welfare, and environment than state law; declaring that if state or local laws and regulations conflict the more restrictive law or regulation governs; and specifying that such local laws and regulations are not a taking of private property requiring compensation under the Colorado constitution.

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

Shall there be an amendment to the Colorado constitution concerning local government regulation of oil and gas development, and, in connection therewith, allowing local governments to prohibit or limit oil and gas development, including hydraulic fracturing; authorizing local laws and regulations that are more restrictive and protective of a community's health, safety, welfare, and environment than state law; declaring that if state or local laws and regulations conflict the more restrictive law or regulation governs; and specifying that such local laws and regulations are not a taking of private property requiring compensation under the Colorado constitution?

GROUND FOR RECONSIDERATION

I. 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 #93 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 local control of “oil and gas development” the initiative actually includes the following several, unrelated subjects:

- (1) Expanding the authority of local governments to prohibit or limit the exploration and production of Colorado’s oil and gas (#93, § 2);
- (2) Depriving property owners of the rights and protections granted under Sections 14 and 15 of Article II of the Colorado constitution (#93, § 3);
- (3) Exempting local governments from complying with the requirements of Article XX and Section 16 of Article XIV of the Colorado constitution (#93, § 2); and
- (4) Changing the legal standard used to determine the validity of a local law that conflicts with a state law (#93, § 4).

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.

II. The Title and Submission Clause as Drafted Fail to Describe Important Aspects of the Measure and Contain an Impermissible Catch Phrase.

A measure’s title and submission clause must “correctly and fairly express the true intent and meaning” of the measure. C.R.S. § 1-40-106(3)(b). “[A] material omission can create misleading titles.” *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. *Id.*

The title and submission clause for measure #93 are misleading and confusing because they fail to describe important aspects of the measure. Also, the title and submission clause include an impermissible catch phrase. Among other defects, the title and submission clause:

- (1) Fail to reflect that the measure increases the authority of local governments to enact laws that prohibit or limit oil and gas operations;
- (2) Do not provide notice of the measure’s definition of oil and gas operations; and
- (3) Include the catch phrase “hydraulic fracturing,” which is politically charged and is likely to appeal to voter emotion without contributing to public understanding of the relationship between the initiative and hydraulic fracturing; and
- (4) Contrary to the requirements of C.R.S. § 1-40-106(3), the title and submission clause are nearly identical to those set for proposed initiatives 2013–2014 #90, 2013–2014 #91, and 2013–2014 #92.

Therefore, in the alternative, opponents request a title and submission clause that reflect these important aspects of the measure and the removal of the impermissible catch phase.

CONCLUSION

Based on the foregoing, Mr. Cordero and Mr. Prestidge request a re-hearing of the Title Board for Initiative 2013-2014 #93. 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 and submission clause consistent with the concerns set forth above.

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

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