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Colorado Secretary of State

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

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Laura C. Reinsch, Objector

vs.

D'Arcy Straub and Gene Straub, Proponents.

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**MOTION FOR REHEARING ON INITIATIVE 2015-2016 #114  
("Civil Unions and Marriage")**

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Laura C. Reinsch, a registered elector of the State of Colorado, through legal counsel, Recht Kornfeld P.C., objects to the Title Board's title and ballot title and submission clause set for Initiative 2015-16 #114 ("Civil Unions and Marriage").

**A. The Title Board set a title for Initiative 2015-16 #114 on April 20, 2016.**

At the hearing held in connection with this proposed initiative, the Board designated and fixed the following ballot title and submission clause:

*Shall there be an amendment to the Colorado constitution and a change to the Colorado Revised Statutes concerning marriage, and, in connection therewith, replacing the statement in the Colorado constitution that only a union of one man and one woman is valid or recognized as a marriage with a statement requiring the state of Colorado to respect the Establishment, Equal Protection, and Due Process Clauses of the United States constitution for issues concerning civil unions and marriages and enacting new statutes that prohibit the state or a local government from enacting or recognizing any law that defines marriage, require recognition of all out-of-state marriages and previously established Colorado marriages as civil unions, authorize laws and rules governing civil unions, and require the amendment or repeal of all existing inconsistent laws or rules?*

**B. Initiative #114 contains multiple subjects, contrary to Colo. Const., art. V, sec. 1(5.5).**

**1. This measure cannot be encapsulated within a single subject.**

The single subject of the proposed initiative – “concerning marriage” – is really an umbrella label for a measure that the proponents have not adequately defined and that the Title Board admits defies clear explanation. *In re Title, Ballot Title, and Submission Clause and Summary for Proposed Initiative for 1997–1998 # 64*, 960 P.2d 1192, 1200 (Colo. 1998) (“If the entire judicial branch were regarded as a single subject, incongruous and disconnected provisions

could be contained in a single initiative and the very practices the single subject requirement was intended to prevent would be facilitated.”). In the original hearing on this measure, members of the Board were candid about the confusion that is inherent to this measure due to the wording used. Because the measure is vague and incomprehensible, the Board cannot set a title because it cannot identify the confines of the measure itself.

[T]he Board's uncertainty as to whether the instant initiatives contained multiple subjects necessarily leads us to the conclusion that the title does not satisfy the long-standing requirement that it “clearly” state the single subject proposed by the initiatives. Before a clear title can be written, the Board must reach a definitive conclusion as to whether the initiatives encompass multiple subjects. Absent a resolution of whether the initiatives contain a single subject, it is axiomatic that the title cannot clearly express a single subject.

*In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 25, 974 P.2d 458, 468-69 (Colo. 1999).*

2. This measure vaguely addresses constitutional rights under the U.S. Constitution by amending one provision of the State Constitution and also prospectively eliminates the fundamental right of marriage.

In addition to acknowledging the applicability of certain constitutional precepts under the U.S. Constitution, the initiative also abolishes state-sanctioned marriage – a fundamental constitutional right – and codifies civil unions, thus altering certain statutory rights of persons who may seek the benefits of marriage but do not seek or are philosophically opposed to a religious marriage. *In re Title, Ballot Title, and Submission Clause for Proposed Initiative 2001-2002 No. 43, 46 P.3d 438, 448 (Colo. 2002)* (measure that altered petition rights and fundamental constitutional right of personal property ownership violated the single subject requirement). The right to marry is a fundamental constitutional right, and no couple may be deprived of that right. *Obergefell v. Hodges*, 135 S.Ct. 2584, 2605 (2015). The prospective abolition of a fundamental constitutional right is a separate subject.

3. This measure vaguely addresses constitutional rights under the U.S. Constitution by amending one provision of the State Constitution and also retroactively eliminates the fundamental right of marriage.

In addition to acknowledging the applicability of certain constitutional precepts under the U.S. Constitution and prospectively abolishing the fundamental right of state-sanctioned marriage, the initiative also retroactively abolishes the fundamental right of state-sanctioned marriage and converts any Colorado married couple’s legal status from marriage to a civil union. *In re Proposed Petition to Add Section 2 of Article VII to the Colorado Constitution*, 900 P.2d 104, 109 (Colo.1995) (creation of retroactive fundamental rights was a second subject in a measure that addressed petition procedures). That retroactive deprivation of a fundamental constitutional right is a separate subject.

4. This measure vaguely addresses constitutional rights under the U.S. Constitution by amending one provision of the State Constitution and also adopts civil unions as the sole form of state-sanctioned union.

The obvious needs restating here: a civil union is not a marriage. Colorado statute recognizes this fact. C.R.S. §§14-15-102 (“the general assembly, in the exercise of its plenary power, has the authority to define other arrangements, such as a civil union between two **unmarried persons regardless of their gender**”); -118 (Colorado Civil Union Act “**shall not be construed to create a marriage between the parties to a civil union...**”) (emphasis added). The courts also recognize this fact. *See, e.g., Bishop v. Oklahoma ex rel. Edmondson*, 447 F.Supp. 2d 1239, 1247 (2006); *Burns v. Burns*, 560 S.E.2d 47, 48 (Ga. App. 2002). “Civil unions” thus does not fit within the alleged single subject of “concerning marriage.”

Accordingly, Initiative #114’s repeal of the right to state-sanctioned marriage is its own subject. The adoption of a comprehensive system of civil unions (prospective and retroactive) is “separate and unconnected” as a subject of this measure. *See #64, supra*, 960 P.2d at 1200.

5. This measure also authorizes the enactment of restrictive or conflicting laws and rules about civil unions, including by “any administrative agency of the state or a local government.”

The measure also empowers the General Assembly “and any administrative agency of the state or a local government” to “prescribe any law or rule that governs a civil union between a same-sex couple or between an opposite-sex couple.” This is the measure’s “Kim Davis” provision, authorizing any local official to erect impediments to civil unions as she might see fit. Not only does this initiative seek to eliminate a fundamental right, prospectively and retroactively, this specific provision surreptitiously authorizes local agencies to undercut the remaining “right” of a civil union. This is precisely the type of provision that is “coiled in the folds” of a complex measure that will surprise voters and thus violate the single subject requirement. *In re Proposed Initiative for 2009–2010 # 91*, 235 P.3d 1071, 1079-80 (Colo. 2010).

6. The Title Board lacks jurisdiction to set a title for a measure that is patently unconstitutional.

The Title Board is a constitutionally authorized body. The elected and appointed officials who are its members, or their designees, have no power to act contrary to the United States Constitution. An initiative that deprives Coloradans of a recognized fundamental right is, by definition, contrary to the Constitution. In order to uphold their oaths of office, no appointee to the Board or a designee acting for a statutory appointee may establish a ballot title for this initiative. Initiative #114 is clearly unconstitutional and clearly unlawful, a matter that is now settled law, and because it cannot be given effect, should not be placed on the ballot.

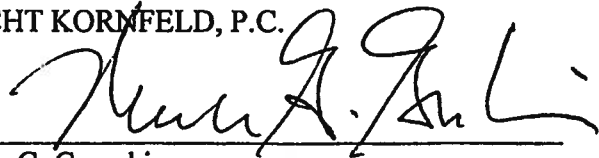
**C. Initiative #114's title is misleading and inaccurate, contrary to C.R.S. §§ 1-40-106, -107.**

1. An initiative that cannot be fully explained and understood by the Board cannot be accurately described by the Board in a ballot title.
2. The phrase "require recognition of all out-of-state marriages and previously established Colorado marriages as civil unions" is misleading when the measure "prevents recognition" of all state-sanctioned marriages.
3. The title fails to clearly and specifically state that the initiative proposes to repeal the fundamental to marry, both prospectively and retroactively.
4. The phrase "authorize laws and rules governing civil unions" fails to describe the fact that such provisions can: (a) be adopted at the state or the local levels; (b) emanate from administrative agencies at either level; and (c) either impose or remove requirements related to civil unions.
5. The phrase "prohibit the state or local government from enacting or recognizing any law that defines marriage" fails to succinctly describe what the initiative does: "prohibit state-sanctioned marriage in Colorado."

WHEREFORE, the titles set April 20, 2016 should be reversed, due to the single subject violations and the Board's lack of jurisdiction, as addressed herein, or in the alternative, be reworded to account for the misleading and inaccurate representation of the initiative.

RESPECTFULLY SUBMITTED this 27th day of April, 2016.

RECHT KORNFELD, P.C.



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**CERTIFICATE OF SERVICE**

I hereby affirm that a true and accurate copy of the MOTION FOR REHEARING ON INITIATIVE 2015-2016 #114 was sent this day, April 27, 2016 via email to proponents at:

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