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BEFORE THE BALLOT TITLE SETTING BOARD, STATE OF COLORADO

COLORADO SECRETARY OF STATE

MOTION FOR REHEARING ON INITIATIVE 2015-2016 #40

IN RE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE SET FOR INITIATIVE
2015-2016 #40

Petitioner, Douglas Kemper, a registered elector of the State of Colorado, by and through his counsel, Burns, Figa & Will, P.C., hereby requests a rehearing and reconsideration of the title and ballot title and submission clause (collectively the "Titles") set by the Title Board on December 16, 2015, for Initiative 2015-2016 #40 (the "Initiative"), which would amend the Colorado constitution. Reconsideration is requested because the titles are confusing, misleading, and do not reflect the intent and meaning of the amendment, in violation of C.R.S. § 1-40-106, and because the Initiative contains multiple subjects.

I. The Initiative contains multiple subjects.

Petitioner Kemper generally agrees with the identification of multiple subjects by Petitioners Bentley and Dempsey in their motion for rehearing. The Board may not set a title if the Initiative does not contain a single subject.

II. The Title Board set a confusing and misleading title for the Initiative.

At the December 16, 2015 hearing, the Title Board set the following title for the Initiative:

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 rights of natural persons, communities, and nature and the power to define or eliminate the rights and powers of corporations or business entities to prevent them from interfering with those rights; and declaring that such local laws are not subject to preemption or nullification by any federal, state, or international laws.

Colorado law requires that an initiative's title must "correctly and fairly express the true intent and meaning" of the measure. C.R.S. § 1-40-106(3)(b). Furthermore, the title should clearly express the initiative's single subject. *In re Title, Ballot Title, and Submission Clause for 2009-2010 #45*, 234 P.3d 642, 647-48 (Colo. 2010). In setting titles, the Board "shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a 'yes/for' or 'no/against' vote will be unclear." C.R.S. § 1-40-106(3)(b). Moreover, "a material omission can create misleading titles." *Garcia v. Chavez*, 4 P.3d 1094, 1098 (Colo. 2000).

As adopted, the Titles are misleading because:

1. The title unfairly implies the measure would only restrict corporations and business entities by omitting mention of the broader authorization in the text of the initiative—for “prohibitions and other means deemed necessary”—which includes prohibitions not only of businesses but also of one local government conducting activities within the boundaries of another. Local governments in Colorado frequently interact in this way; for example, many communities obtain water supplies from outside their own boundaries. The title language does not reflect this material feature of the initiative when describing the local governments’ prohibitive powers only in relation to business entities.
2. The title unfairly implies that the exemption from preemption or nullification is absolute by omitting any mention of the limitation within subsection 3 of the Initiative, which states that local laws shall not be subject to preemption or nullification “*provided that* (A) Such local laws do not restrict fundamental rights of natural persons, their local communities, or nature secured by local, state, or federal constitutions, or by international law; and (B) Such local laws do not weaken protections for natural persons, their local communities, or nature provided by state, federal, or international law.” (Emphasis added).

For these reasons, the Titles do not conform to the statutory requirements of C.R.S. § 1-40-106(3)(b).

WHEREFORE, Petitioner Douglas Kemper respectfully requests a rehearing and reconsideration of the title and ballot title and submission clause set by the Title Board on December 16, 2015, for Initiative 2015-16 #40.

Respectfully submitted this 23rd day of December, 2015.

BURNS, FIGA & WILL, P.C.

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CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing **MOTION FOR REHEARING** was served via email and U.S. Mail on this 23rd day of December 2015, as follows:

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