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BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Colorado Secretary of State

Adam Franklin and Gregory Smith, Objectors,

In re Title and Ballot Title and Submission Clause for Initiative 2015-2016 #47

MOTION FOR REHEARING

Adam Franklin and Gregory Smith, through legal counsel, Recht Kornfeld P.C., object to the Title Board's title and ballot title and submission clause set for Initiative 2015-16 #47 ("Iran Divestment of Public Funds").

I. The Title Board set a title for Initiative 2015-16 #47 on January 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 Revised Statutes prohibiting the investment of public funds in companies that conduct specified business operations with the Islamic Republic of Iran, and, in connection therewith, specifying such companies as "Iran-restricted companies"; defining "public funds" as moneys of the State of Colorado, the Regional Transportation District, and certain government retirement organizations; and requiring administrators of each public fund to: create a list of Iran-restricted companies in which the public fund has or may have holdings; send written notice to the listed companies to notify them of the possibility of divestment if active business operations continue; divest from companies that continue to have active business operations after receiving notice from the public fund; not acquire direct holdings in Iran-restricted companies; request that managers of indirect holdings of the public fund avoid participation in Iran-restricted companies; and prepare annual reports regarding the public fund's divestment from Iran-restricted companies?

II. The titles do not comply with statutory mandates for ballot titles.

A. The title fails to accurately disclose that "indirect" investments are covered by the measure's divestment policy.

As approved by the Board, the titles only state regarding "indirect" investments that administrators of public funds "request that managers of indirect holdings of the public fund avoid participation in Iran-restricted companies." In fact, the measure does much more.

Divestment of indirect holdings is required in the defined benefit plans of the public funds. Section 1, Proposed §24-54.8-203(2)(a), requires divestment to apply to all publicly traded securities (“the public fund shall sell, redeem, divest, or withdraw all publicly traded securities of the company”), without any distinction between direct and indirect holdings. A public fund is required to divest entirely from a commingled fund which may have hundreds of holdings, only one of which may be an Iran-restricted company.

Additionally, the requirement to make a request to managers of indirect holdings to avoid participation in Iran-restricted companies only applies to private equity holdings. Proposed § 24-54.8-204(5). No provision in the proposed language of the initiative requires such notice in the defined benefit plans or in the defined contribution plans. The title is overly-broad in its description.

Further, current law as it pertains to divestment excludes “indirect holdings in actively managed investment funds.” C.R.S. § 24-54.8-104(5). In contrast, #47 limits that exclusion to Sudan divestment so that it will not apply to investments covered by Part 2, which is created by this measure. Section 4, Proposed § 24-54.8-104(5).

Finally, the titles state that administrators of a public fund shall “not acquire direct holdings in Iran-restricted companies.” This language is under-inclusive. In fact, such prohibition also applies to indirect holdings. Proposed §24-54.8-204(3) states “[p]ublic funds shall not undertake investments in an indirect passively managed fund that is not held in the public fund’s portfolio as of the effective date of this part 2, where the passively managed fund contains publicly traded securities of an Iran-restricted company with active business operations in Iran.”

Because voters would not normally intuit the applicability of the measure to “indirect” holdings, the titles must reflect the provisions in the measure that relate to such investments and holdings as they are limited or prohibited.

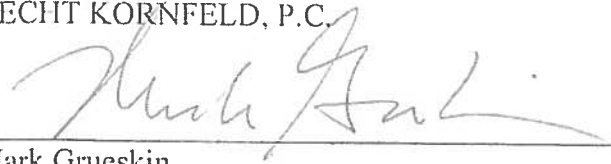
B. The titles incorrectly refer to Initiative #47 as an “amendment” rather than a statutory “change.”

The ballot title and submission clause must be worded, “Shall there be a *change* to the Colorado Revised Statutes...” rather than the existing language of “Shall there be an *amendment* to the Colorado Revised Statutes...” Such wording is expressly required by C.R.S. 1-40-106(3)(c): “the title board shall describe a proposition in a ballot title as a ‘change to the Colorado Revised Statutes.’” This wording is necessary “to avoid confusion between a proposition and an amendment,” the latter being constitutional in nature. *Id.* The Title Board failed to use this required wording in the titles set on January 20.

WHEREFORE, the titles set on January 20, 2016 should be modified to account for the concerns raised in this Motion for Rehearing.

RESPECTFULLY SUBMITTED this 27th day of January, 2016.

RECHT KORNFELD, P.C.



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CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the MOTION FOR REHEARING ON INITIATIVE 2015-2016 #47 was sent this day, January 27, 2016 via first class U.S. mail, postage pre-paid to the proponents at:

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