

---

**BEFORE THE COLORADO BALLOT TITLE SETTING BOARD**

---

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE  
2015-2016 #63

---

**MOTION FOR REHEARING**

---

Registered electors, Tracee Bentley and Stan Dempsey, through their legal counsel, Ryley Carlock & Applewhite, request a rehearing of the Title Board for Initiative 2015-2016 No. 63. As set forth below, Ms. Bentley and Mr. Dempsey 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 January 20, 2015, the Title Board designated the title as follows:

An amendment to the Colorado constitution concerning natural persons' fundamental right to a healthy environment and, in connection therewith, requiring state and local governments to assign the highest priority to protecting a healthy environment; allowing local governments to enact laws that are protective of a healthy environment; stating that such a local law governs over a state law that is less protective of a healthy environment; allowing natural persons and governmental entities to sue to enforce the fundamental right to a healthy environment; and awarding reasonable costs of litigation upon determination that a violation has occurred.

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

Shall there be an amendment to the Colorado constitution concerning natural persons' fundamental right to a healthy environment and, in connection therewith, requiring state and local governments to assign the highest priority to protecting a healthy environment; allowing local governments to enact laws that are protective of a healthy environment; stating that such a local law governs over a state law that is less protective of a healthy environment; allowing natural persons and governmental entities to sue to enforce the fundamental right to a healthy environment; and awarding reasonable costs of litigation upon determination that a violation has occurred?

**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*, 974 P.2d 458, 463 (Colo. 1999) (a proposed initiative violates the single subject rule where it “has at least two distinct and separate purposes which are not dependent upon or connected with each other”). The Board set title for Initiative No. 63 despite the fact that it contains multiple distinct and separate purposes that are not dependent upon or connected with one another. Specifically, the initiative includes the following several, unrelated subjects:

- (1) Section 32(2)(a) provides a definition of healthy environment “including healthy air, water, land, and ecological systems.” The term “including” means that some but not all of the items covered are set forth. The title does not reflect that additional unstated subjects are part of this definition.
- (2) Section 32(a)(3) rearranges the legal status of local governments in relation to Article XX and section 16 of Article XIV of the Colorado Constitution. This is a separate subject which is not reflected in the title.
- (3) Section 32(3) establishes a new “inherent, indefeasible, and inalienable right to a healthy environment and, in the same subsection, characterizes it as a “fundamental right of natural persons,” and subsection (4) requires state and local governments to protect the right with ‘the highest priority’ thereby establishing a priority ranking of fundamental rights natural persons have under the Colorado constitution and statutes. Protecting the environment, however defined, and creating a hierarchy of fundamental rights in natural persons are two independent separate subjects.
- (4) Section 32(5) establishes a new preemption regime in two ways. That section allows local government charter provisions and ordinances to preempt state statutes, in large measure reversing the present preemption law; and second, it creates a new form of preemption based on the breadth of a particular ordinance or charter provision compared to a state statute. No longer is preemption based on express, implied or operational conflict; but rather on which statute, ordinance, or charter provision is more restrictive. *See Bd. Of Cnty. Comm’rs v. Bowen/Edwards Assocs., Inc.*, 830 P.2d 1045, 1048-49 (Colo. 1992).
- (5) Section 32(6) establishes a separate right in both persons and governmental entities to bring an action at law or in equity for injunctive or declaratory relief. Requiring state and local governments to prioritize the protection of the environment and authorizing a new action at law or in equity for persons and governmental entities are two separate and independent subjects.

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 AND MISLEADING THE BOARD CANNOT SET A TITLE THAT ENCOMPASSES AND REFLECTS THE PURPOSE OF THE PROPOSAL.**

Colorado Revised Statute §1-40-106(3)(b) and (c) requires the ballot title to accurately reflect the subject matter of an initiative to avoid confusion over its true intent, purpose and meaning. *Aisenberg v. Campbell*, 987 P.2d 249, 253 (2000). The Title set for Initiative No. 63 violates this statutory provision in the following ways:

- (1) Section 32(2)(a) is vague and misleading because the items after the word term “including” are only a partial list of the subjects, some stated and others unstated, this section contemplates. The Title Board failed to mention that provision when setting the title. Therefore, the electorate will be unaware the initiative covers unstated subjects.
- (2) Section 32(3) utilizes the term “fundamental right” which is also repeated in the ballot title. This term is catch phrase that creates a prejudice in favor of the initiative.
- (3) Section 32(4) prioritizes the right to a healthy environment in a manner that is vague and misleading with regard to other individual constitutional rights.
- (4) Section 32(6) states that an “aggrieved natural person or governmental entity” may bring an action to enforce the amendment. The title does not reflect the person or entity suing must be aggrieved. Therefore the title is vague and fails to communicate that requirement.
- (5) The title not only fails to reflect that section 32(6) provides for “punitive damages for reckless disregard” of this constitutional amendment, but also neither the initiative nor the title reflect what constitutes circumstances of “reckless disregard.” Therefore the title is vague and misleading.

Based on the foregoing, Ms. Bentley and Mr. Dempsey respectfully request the Title Board conduct a re-hearing on the title set for Initiative 2015-2016 #63.

Respectfully submitted this 27th day of January, 2016 by:

RYLEY CARLOCK & APPLEWHITE



Richard C. Kaufman, No. 8343

Sarah K. Pallotti, No. 45077

1700 Lincoln Street, Suite 3500

Denver, Colorado 80203  
Phone: (303) 813-6745  
Fax: (303) 595-3159  
[rkaufman@rcalaw.com](mailto:rkaufman@rcalaw.com)  
[spallotti@rcalaw.com](mailto:spallotti@rcalaw.com)

*Attorneys for Tracee Brantley  
and Howard Stanley Dempsey*

Objectors' addresses:

Tracee Bentley  
301 Immigrant Trail  
Severance, CO 80550

Howard Stanley Dempsey  
3110 Alkire Street  
Golden, CO 80401