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Colorado Secretary of State

BEFORE COLORADO STATE TITLE SETTING BOARD

In re Ballot Title and Submission Clause for 2017-2018 Initiative #146 (“Transparency in Health Care Billing”)

Deborah Farrell, Objector.

MOTION FOR REHEARING

Pursuant to C.R.S. § 1-40-107, Objector, Deborah Farrell, a registered elector of the State of Colorado, through her legal counsel, Lewis Roca Rothgerber Christie LLP, submits this Motion for Rehearing of the Title Board’s March 7, 2018 decision to set the title of 2017-2018 Initiative #146 (“Initiative”), and states:

I. The Initiative impermissibly contains multiple separate and distinct subjects in violation of the constitutional single-subject requirement.

While the Initiative purports to address only the subject of transparency in health care billing, several subjects are impermissibly woven together in the Initiative, including:

- Requiring broad disclosure by insurance carriers of “all forms of remuneration derived from rebates or other forms of incentive received as the result of healthcare services or purchases of prescription drugs or medical devices.” (Initiative § 10-16-147(3) (emphasis added).) Because many payments made to insurance carriers are related in some way to healthcare services, prescription drugs, or medical devices, this catch-all provision requires insurance carriers to disclose a large percentage of all payments or other compensation they receive, regardless of whether or not those activities are reasonably related to billing transparency.
- Imposing separate requirements on insurance carriers, healthcare providers (e.g., doctors, hospitals, etc.) and pharmacies. Each of these are regulated by a different governmental body—providers are regulated by the Colorado Department of Public Health and Environment; pharmacies are regulated by the State Board of Pharmacy; and health insurance carriers are regulated by the Commissioner of Insurance. *See* Fiscal Note at 1-2.
- Requiring healthcare providers to publish a list of all persons that provide healthcare services, including their relationship with the healthcare

provider, and other details that would otherwise be private employment information. (Initiative § 6-20-104(5).)

These additional subjects represent distinct and additional purposes of the Initiative, thus violating the single-subject requirement. *See* C.R.S. § 1-40-106.5. Further evidencing the Initiative’s multiple subjects is the fact that the Initiative makes changes to Title 6 (Consumer and Commercial Affairs), Title 10 (Insurance), and Title 25 (Public Health and Environment) of the Colorado Revised Statutes.

II. The title set by the Title Board is unfair and does not fairly express the true meaning and intent of the proposed constitutional amendment.

The title set for the Initiative by the Title Board fails to fairly, clearly, and accurately convey the central features of the measure will have because it does not:

- Explain that the initiative affects a very broad range of providers, including many that may not commonly be considered to be “health care” providers by the public, such as athletic trainers, massage therapists, psychologists, social workers, and professional counselors. (Initiative § 6-20-103(14).) Instead, the title refers only to “health care providers, as broadly defined by the measure.”
- Explain that healthcare providers using the Centers for Medicare and Medicaid Services fee schedule will be subject to different disclosure requirements than other healthcare providers. (Initiative § 6-20-103(3).)

WHEREFORE, Objector respectfully requests that the Title Board set Initiative 146 for rehearing pursuant to C.R.S. § 1-40-107(1).

DATED: March 14, 2018.

s/ Thomas M. Rogers III

Thomas M. Rogers III

Dietrich C. Hoefner

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CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2018, a true and correct copy of this **MOTION FOR REHEARING** was served on proponents via email as follows:

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s/ Robin A. Newcomer _____