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*By Steven Ward at 2:58 pm, Apr 08, 2020*

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE BALLOT TITLE AND SUBMISSION CLAUSE FOR  
INITIATIVE 2019-2020 #297

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MOTION FOR REHEARING

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On behalf of proponents Greg Kishiyama and Ned Southwick, the undersigned counsel hereby submits this Motion for Rehearing pursuant to C.R.S. 1-40-107 (1)(a)(I). As grounds therefore proponents state the following:

**A. BACKGROUND**

Initiative #297 is an amendment to the Colorado Constitution. The measure is limited in scope and the intent of the proposed law is clearly stated to prohibit the inhibition of consumer choice through restrictions or other limitations on natural gas installation for cooking, hot water systems, generator and heating systems. The measure, in full, states:

NO STATE STATUTE, REGULATION, MUNICIPALITY, COUNTY OR LOCAL GOVERNMENT SHALL INHIBIT CONSUMER CHOICE THROUGH RESTRICTIONS ON THE INSTALLATION OF NATURAL GAS UTILIZATION IN HOMES AND BUSINESSES FOR COOKING, HOT WATER SYSTEMS, GENERATORS AND HEATING SYSTEMS IN NEW CONSTRUCTION OR RENOVATION OR OTHERWISE LIMIT A CONSUMER'S ABILITY TO USE OR INSTALL NATURAL GAS, EXCEPT AS REQUIRED FOR SAFETY PURPOSES. THIS SECTION SHALL MODIFY, LIMIT AND SUPERSEDE ANY CONFLICTING STATE STATUTE OR REGULATION.

On April 1, 2020 the Title Board met and fixed the following title:

An amendment to the Colorado constitution prohibiting the state and local governments from restricting the installation and use of natural gas in homes and businesses except as required for safety purposes.

**B. THE TITLE DOES NOT FAIRLY EXPRESS THE TRUE MEANING AND INTENT OF THE AMENDMENT**

1. *The Title Board erred in omitting the measure's limiting language.*

The scope of the measure is limited to installation of natural gas for cooking, hot water systems, generators and heating systems. The amendment must be read and its language interpreted in its context. *Matter of Title, Ballot Title and Submission Clause, and Summary for 1997-98 No. 62, 1998, 961 P.2d 1077.*

The board declined to interpret the measure's language as limiting instead relying on rules of statutory construction related to nonexclusive lists. Statutes containing the word

“including” before listing examples are properly interpreted as nonexclusive. Because the General Assembly typically uses “include” as a word of extension or enlargement, listing examples in a statutory definition does not restrict the term's meaning. *S. Ute Indian Tribe v. King Consol. Ditch Co.*, 250 P.3d 1226, 1233 n. 4 (Colo.2011); *see also Lyman v. Town of Bow Mar*, 188 Colo. 216, 222, 533 P.2d 1129, 1133 (1975) (stating that the word “ ‘include’ ” in a statute ordinarily signifies extension or enlargement, and it is not synonymous with the word “ ‘mean’ ”).

This is not the case in this measure. Here, “cooking, hot water systems, generators and heating systems” is preceded by “for”, not “including”. The intent, as stated at review and comment and before the Title Board, is to limit the operation of the statute to these particular uses. The list is exhaustive as reflected in the text of the measure. Further, the limitation is central to the measure and must be included in the title.

Not only is the limitation central to the measure, it also assists voters in an overall understanding of the term natural gas. Voters not familiar with the differences between natural gas, propane, gasoline and oil will better understand what natural gas is in the context of its ordinary usage. This problem was highlighted in the review and comment memo question #4, “The proposed initiative covers natural gas, but not oil. May the state and local governments inhibit consumer choice regarding oil, and if so, why?” The proponents affirmed that under the measure the state may regulate oil. The “why” sounds simple—because natural gas is not oil. But these differences may not be understood by voters without further information.

The most efficient way to better advise voters while covering the central features of the measure is to include the limitation and usage language in the ballot title.

2. *The Title Board erred in failing to include language advising voters of the intent of the measure.*

A ballot title must correctly and fairly express the true intent and meaning of the proposed measure. *In re Second Initiated Constitutional Amendment*, 200 Colo. 141, 613 P2d 867 (1980). The current ballot title does not inform voters of the intent of the measure. As stated in the measure itself, the intent is to allow consumer choice. The current title makes no mention of consumer choice and as discussed above does not even list the types of consumer uses covered by the measure.

3. *The Title Board erred in failing to include language related to other limitations on consumer use of natural gas.*

The title only mentions restrictions on natural gas but makes no mention of other limitations. As discussed at the hearing, other limitations could include higher license fees or practices that artificially inflate the cost of natural gas installation. These practices go beyond an ordinary understanding of the term “restriction”. Because this is a central feature of the measure it must be described in the title.

Wherefore the Proponents request that this Motion for Rehearing be granted, and rehearing set pursuant to C.R.S. 1-40-107(1)

Submitted this 8th<sup>th</sup> day of April 2020.

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