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COLORADO TITLE SETTING BOARD

**IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR PROPOSED INITIATIVE 2019-2020 #300**

MOTION FOR REHEARING ON PROPOSED INITIATIVE 2019-2020 #300

On behalf of Timothy Steven Howard, registered elector of the State of Colorado, the undersigned counsel hereby submits to the Title Board this Motion for Rehearing on Proposed Initiative 2019-2020 #300 (“Initiative #300”) pursuant to Section 1-40-107, C.R.S. (2019), and as grounds therefore state as follows:

I. THE TITLE SET BY TITLE BOARD AT APRIL 15, 2018 HEARING

On April 15, 2020, the Title Board set the following ballot title and submission clause for Initiative #300:

Shall there be an amendment to the Colorado constitution allowing counties and municipalities to assume some or all of the Oil and Gas Conservation Commission’s regulatory authority over oil and natural gas operations within their boundaries, and, in connection therewith, authorizing counties and municipalities to regionally coordinate control of such operations and specifying that counties and municipalities are not granted the right to enact moratoriums on such operations?

II. GROUNDINGS FOR REHEARING

A. The Initiative Impermissibly Contains Several Separate and Distinct Subjects in Violation of the Constitutional and Statutory Single Subject Requirement.

Under article V, section 1(5.5) of the Colorado constitution and section 1-40-106.5, C.R.S., proposed ballot measures must contain only a single subject. “[T]he Board may not set the titles of a proposed Initiative, or submit it to the voters, if the Initiative contains multiple subjects.” *Aisenberg v. Campbell (In re Title, Ballot Title & Submission Clause 1990-2000 #104)*, 987 P.2d 249, 253 (Colo. 2000).

The single subject requirement prevents two dangers. First, combining subjects with no necessary or proper connection for the purpose of garnering support for the initiative from various factions -- that may have different or even conflicting interests -- could lead to the enactment of measures that would fail on their own merits. See *In re Proposed Initiative 2001-02 No. 43*, 46 P.3d 438, 442 (Colo. 2002); see § 1-40-106.5(1)(e)(I). Second, the single subject requirement is intended to “prevent surprise and fraud from being practiced upon voters caused

by the inadvertent passage of a surreptitious provision ‘coiled up in the folds’ of a complex initiative.” *Id.*

Initiative #300 contains at least two separate subjects, in violation of article V, section 1(5.5) of the Colorado constitution and section 1-40-106.5, C.R.S. The Initiative does the following:

At the initial Title Board hearing on April 15th, Proponents asserted that single subject of the measure is the “local control of oil and gas operations.” In subsection 1, Initiative #300 purports to amend the Colorado constitution by adding a new article that grants local governments the authority to assume “all or part of the of the authority over oil and natural gas operations currently covered by article 60 of Title 34 of the Colorado Revised Statutes” within the geographic boundary of the local government. This would appear to be the Initiative’s principal purpose and subject.

In subsections 2 and 3, the measure then allows local governments to enter into intergovernmental agreements for regional coordination of control of oil and gas activities and defines the term “local government.” These would appear to be implementation details that flow from the measure’s single subject.

In subsection 4, however, the measure says that it does not convey the right for a local government to enact a moratorium. Subsection 4 is not an enforcement or implementation detail and instead does the complete opposite of what the single subject of the measure purports to do – give local control of oil and gas operations to local governments. Additionally, article 60 of title 34 of Colorado Revised Statutes does not give local governments the right to enact moratoria. Moratoria, therefore, has no connection to the Oil and Gas Conservation Commission’s (“COGCC”) regulatory authority over oil and natural gas operations. Instead, it appears Proponents included this provision for the purpose of garnering support for their measure from particular voters.

This second subject in proposed Initiative #300 does what the Supreme Court has said that the single subject requirement is designed to prevent: “engaging in 'log rolling' or 'Christmas tree' tactics in which proponents attempt to garner support for their initiative from "various factions which may have different or even conflicting interests." *In re Proposed Initiative on "Public Rights in Water II"* 898 P.2d 1076, 1079 (Colo. 1995). It is entirely likely that supporters of local control over oil and gas development would not support denying all rights for a local government to adopt a moratorium on such oil and gas development. Similarly, supporters of prohibiting moratoria by local governments on oil and gas development are not likely to be the same voters who support granting local control of oil and gas development to local governments.

B. The Ballot Title and Submission Clause Is Misleading, and Does Not Correctly and Fairly Express Its True Intent and Meaning.

The title of the Initiative #300 is misleading and does not correctly and fairly express the initiatives' true intent and meaning. Section 1-40-106(3)(b), C.R.S. provides:

In setting a title, the title 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" or "no" vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly express the true intent and meaning thereof, together with the ballot title and submission clause. . . .

The title of Initiative #300 misleads the voters by failing to inform them of the following: (1) how local governments and the COGCC might share control over oil and gas operations if a local government only assumes “some” and not “all” of the COGCC’s regulatory authority; (2) what happens to a local governments “control” if its requirements are more stringent than the COGCC’s? (3) what happens to a local government's “control” if its requirements are less stringent than the COGCC’s?

The title of Initiative #300 is also misleading because it suggests that enacting moratoria on oil and gas operations is within the current regulatory authority of the COGCC.

The title does not enable voters to make an informed choice because it does not correctly and fairly express its true intent and meaning.

III. CONCLUSION

Based on the foregoing, Timothy Steven Howard requests a rehearing of the Title Board for Initiative 2019-2020 #300, because the initiative contains multiple subjects, and the title is misleading to voters because it fails to fairly express the initiative’s true meaning and intent. As a result, the Title Board lacks jurisdiction to set a title and should return the measure to the proponents.

Respectfully submitted this 22nd day of April 2020.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 22nd day of April, 2020, a true and correct copy of **MOTION FOR REHEARING ON PROPOSED INITIATIVE 2019-2020 #300** was filed and served via email or U.S. mail, postage prepaid, to the following:

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