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COLORADO TITLE SETTING BOARD

Colorado Secretary of State

IN THE MATTER OF THE BALLOT TITLE AND SUBMISSION CLAUSE FOR
INITIATIVE 2019-2020 #79, Restoration of Gray Wolves

MOTION FOR REHEARING

On behalf of Carlyle Currier, a registered elector of the State of Colorado, the undersigned counsel hereby submits this Motion for Rehearing of the Title Board's May 1, 2019, decision to set the title of 2019-2020 Initiative #79 ("Initiative"), pursuant to C.R.S. § 1-40-107, and as grounds therefore states that the title set by the Title Board is unfair, unclear and misleading and does not correctly express the true meaning of the measure, as follows:

1. Regarding the term "gray wolves."

The title adopted at the May 1, 2019, Title Board hearing is unclear and misleading because the term "gray wolves" does not adequately explain the type of animal under consideration. There are currently 38 distinct subspecies of gray wolf in existence worldwide.¹ The *Canis lupus nubilus* subspecies of gray wolf that was common in the interior continental United States and inhabited Colorado is extinct.²

The Initiative proposes to intentionally bring gray wolves into Colorado and defines "gray wolf" to mean "a nongame wildlife of the species *Canis Lupus*" without specifying any subspecies that could be introduced, however, circumstances dictate that it would be impossible to reintroduce the native gray wolf subspecies to Colorado. The fact that the Initiative would introduce a nonnative subspecies is a material fact for voters. For decades, Colorado's lead wildlife agency, Colorado legislators, national experts, and a plethora of scientists and organizations have debated and taken formal positions on the ramifications of introducing different nonnative subspecies in Colorado.

The Canadian gray wolf, *Canis lupus occidentalis*, is likely one subspecies that the commission will consider introducing in Colorado. Proponents of introducing this subspecies into Colorado point out that neighboring states have introduced the

¹ Search of *Canis lupus* in the Mammal Species of the World, 3rd edition, database of mammalian taxonomy available at: <https://www.departments.bucknell.edu/biology/resources/msw3/>.

² Jennifer A. Leonard, Carles Vilà, and Robert K. Wayne, *Legacy Lost: Genetic Variability and Population Size of Extirpated US Grey Wolves (Canis lupus)*, MOLECULAR ECOLOGY 14(1): 9-17 (2004); and *Interior Department Steps Up Fight To Save Near-Extinct Wildlife*, U.S. Fish and Wildlife Service Press Release (July 6, 1964) (listing *C. l. nubilus* as extinct) <<https://www.fws.gov/news/Historic/NewsReleases/1964/19640706.pdf>>.

Canadian gray wolf and it would be critical for Colorado to maintain uniform introduction plans. Opponents of introducing this subspecies into Colorado are concerned that the nonnative subspecies is generally bigger and more aggressive than other wolf subspecies, and this subspecies is already migrating to Colorado from other states making introduction duplicative.

Introduction of the Mexican gray wolf, *Canis lupus baileyi*, is another possibility. In 2016, the Colorado Parks and Wildlife Commission (the “Commission”) officially opposed introduction of the Mexican gray wolf into Colorado and recommended “that the Mexican wolf recovery efforts be confined to the subspecies’ historic range.”³ On May 23, 2016, the Commission issued a report explaining how critical the type of wolf subspecies is to any introduction effort, noting that general introduction campaigns “conveniently ignore the potential ramifications of introducing an endangered subspecies into Colorado, especially when Colorado is outside of the historic range of the subspecies. Extreme actions like the one they propose erode public support for the entire Endangered Species Act.”⁴

Each subspecies has different size and weight ranges, social and territorial behaviors, reproduction rates, hunting and feeding behaviors, etc. The costs and impacts of the introduction will depend on the subspecies introduced. For instance, the Commission has noted that introducing any wolf subspecies other than the Canadian gray wolf could create separate public policy concerns and cost components based on the fact that Colorado would then be hosting two different subspecies protected under the Endangered Species Act: 1) Canadian gray wolves that have migrated into Colorado; and 2) the new wolf subspecies.

History makes clear that the type(s) of subspecies being proposed for introduction into Colorado is central and material to any decision. Introduction of nonnative subspecies is very different from reintroducing and restoring native subspecies, and introduction of nonnative subspecies would be considered and treated much differently by voters in comparison with restoring a native subspecies.

The title as currently written is misleading because the use of the general species term “gray wolves” does not communicate the important issue of one or more nonnative subspecies being newly introduced into the state’s ecosystem as proposed by this Initiative. It is important for voters to know that nonnative gray wolves would be brought to Colorado under this Initiative, and this must be identified in the Initiative title. It would be unfair and misleading to ask voters to approve the Initiative without understanding that the Initiative does not reintroduce a native subspecies.

³ Colorado Parks and Wildlife Commission Resolution 16-01.

⁴ *Mexican Wolves in Colorado, More than Political*, Colorado Parks & Wildlife Commission (May 13, 2016) <<https://cpw.state.co.us/Documents/WildlifeSpecies/SpeciesOfConcern/Wolf/Mexican-Wolves-More-Than-Political.pdf>>.

Therefore, the Objector requests that the Title Board add the term “nonnative” before “gray wolves” in each instance of use in the title.

2. Regarding the terms “restoration,” “reintroduction,” and “restore.”

The title is further misleading and does not enable voters to make an informed choice because wording incorrectly communicates to voters that the gray wolves to be brought into this state under the measure are native subspecies of Colorado. Specifically, the title uses the words “restoration,” “reintroduction,” and “restore,” which implicitly convey to voters that the gray wolves that would be intentionally brought to the state are the same as the subspecies of gray wolves that were once inhabiting Colorado.

Based on the plain meaning and definition of each of these terms, the Initiative communicates that the wolves being introduced would be native to Colorado. That is not accurate because the subspecies of gray wolf that once inhabited Colorado has died out and cannot possibly be restored or reintroduced. The Initiative would, in fact, achieve the *introduction* of one or more subspecies of gray wolves that are not native to Colorado. A subspecies of gray wolf cannot be “restored” or “reintroduced” to a place that it never inhabited. The current title language fails to fully and accurately reflect the Initiative.

Although the term “reintroduction” is used in the text of the Initiative, use of an inaccurate term in the proposed statute does not require use of the same term in the title. The objective of the title is to “fairly reflect the proposed initiative such that voters will not be misled into supporting or opposing the initiative because of the words employed by the Title Board.”⁵ The title does not accurately describe the Initiative in stating that the measure will “reintroduce” or “restore” gray wolves.

The Initiative proposes introduction of a nonnative subspecies, and voters should not be misled into supporting the initiative because of the title’s inaccurate references to restoration and reintroduction. Therefore, the Objector requests (a) striking “the restoration of,” (b) changing “reintroduction” to “introduction,” and (c) changing “restore” to “introduce.”

3. Summary of proposed title changes:

A change to the Colorado Revised Statutes concerning ~~the restoration of~~ NONNATIVE gray wolves ~~through~~ AND their ~~reintroduction~~ INTRODUCTION on federal public lands in Colorado located west of the continental divide, and, in connection therewith, requiring the parks and wildlife commission, after holding statewide hearings and using scientific data, to implement a plan to ~~restore~~ INTRODUCE and manage NONNATIVE gray wolves; and requiring the commission to fairly compensate owners for losses of livestock caused by NONNATIVE gray wolves.

⁵ *Matter of Title, Ballot Title and Submission Clause for 2013-2014 #85*, 328 P.3d 136 (Colo. 2014).

Accordingly, the Objector respectfully requests that this Motion for Rehearing be granted and a rehearing set pursuant to C.R.S. § 1-40-107(1).

Respectfully submitted this 8th day of May, 2019.

/s/ Gwendolyn A. Benevento

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