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BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE
2015-2016 #40

COLORADO SECRETARY OF STATE

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. 40. 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 December 16, 2015, the Title Board designated the title as follows:

An amendment to the Colorado constitution concerning a right to local self-government, and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish and protect rights of natural persons, communities, and nature and the power to define or eliminate the rights and powers of corporations or business entities to prevent them from interfering with those rights; and declaring that such local laws are not subject to preemption or nullification by any federal, state, or international laws.

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

Shall there be an amendment to the Colorado constitution concerning a right to local self-government, and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish and protect rights of natural persons, communities, and nature and the power to define or eliminate the rights and powers of corporations or business entities to prevent them from interfering with those rights; and declaring that such local laws are not subject to preemption or nullification by any federal, state, or international laws?

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. 40 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) Establishes an “inherent and inalienable” right of local self-government in the “people” which defines this right as one which is vested in a group rather than an individual. (#40, §1);
- (2) Establishes authority in local government to enact laws to protect health welfare and safety. (#40, § 2);
- (3) Establishes three separate legal regimes that allow local governments to define the “rights of natural persons, their local communities, and nature.” (#40, § 2);
- (4) Establishes a new constitutional and legal framework that allows local governments to enact laws affecting not just business entities, but every single subject of law contained in the Colorado Revised Statutes, including but not limited to water rights (Title 37), courts and procedure (Title 13), domestic relations (Title 14), and post-secondary education (Title 23). (#40, § 2);
- (5) Establishes a new preemption between state and local governments. (#40, § 3);
- (6) Includes the unrelated concept of “nullification” which is a separate subject (*Id.*);
- (7) Amends Article VI of the United States Constitution by making local government ordinances the “supreme Law of the Land.” (#40, §3);
- (8) Amends Article I, Sections 8, 9 and 10 of the United States Constitution by transferring to local government the authority over the subjects covered in that section. (#40, §3); and
- (9) In like manner, it alters Article V of the United States Constitution *sub silentio* by effecting a new procedure by which to amend the same.

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

Colorado Revised Statute §1-40-106(3)(c) requires the ballot title to accurately reflect the subject matter of an initiative to avoid confusion over its meaning and purpose. *Aisenberg v.*

Campbell, 987 P.2d 249, 253 (2000). The Title set for Initiative No. 40 violates this statutory provision in the following ways:

- (1) The measure purports to establish and recognize an “inherent and inalienable right of local self-government” which remains undefined and so vague that the title cannot effectively and clearly include the meaning of these terms.
- (2) The measure purports to allow local governments or the people to broadly enact any local laws to protect health, safety, and welfare, without definition or limit.
- (3) The measure purports to establish and recognize “rights of natural persons, their local communities, and nature.” The scope of these rights are undefined and unexplained in the title.
- (4) The measure purports to secure those “rights” through “prohibitions and other means deemed necessary.” The title cannot encompass such ambiguous and ill-defined terms as “prohibitions” and, particularly, “other means.”
- (5) As explained above in Section I, the measure encompasses every aspect of law contained in the Colorado Revised Statutes. The title does not (and likely could not) address the enormous breadth of the measure.
- (6) The measure, as explained in Section I above, amends at least three separate Articles of the United States Constitution. As set, the title does not even mention the United States Constitution and is therefore confusing and misleading.

III. THE TITLE FAILS TO NOTE CRITICAL PROVISIONS OF THE MEASURE AND IS THEREFORE MISLEADING.

- (1) The title does not include the concept of “health, welfare and safety” found in section 2. That section defines, at least in part, the scope of authority granted to local government and the people to enact local ordinances. Failing to mention this important new authority renders the title 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 #40.

Respectfully submitted this 23rd day of December, 2015 by:

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CERTIFICATE OF SERVICE

I, Richard C. Kaufman, hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2015-2016 #40** was sent this day, December 23, 2015, via first class U.S. mail, postage pre-paid and via email to the proponents at:

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