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Colorado Secretary of State

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE
2015-2016 #77

MOTION FOR REHEARING

Registered electors, Shawn Martini and Scott Prestidge, through their legal counsel, Hogan Lovells US LLP, request a rehearing of the Title Board for Initiative 2015-2016 #77. As set forth below, Mr. Martini and Mr. Prestidge 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 February 3, 2016, the Board set the title as follows:

An amendment to the Colorado constitution concerning a statewide setback requirement for oil and gas development facilities, and, in connection therewith, changing existing setback requirements to require any new oil and gas development facility to be located at least 4,000 feet from the nearest occupied structure and other specified areas; requiring a local government to prohibit any new occupied structure or other specified areas from being built or designated less than 4,000 feet from the nearest active oil and gas development facility; and authorizing the state or a local government to require new oil and gas development facilities to be located more than 4,000 feet from the nearest occupied structure.

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

Shall there be An amendment to the Colorado constitution concerning a statewide setback requirement for oil and gas development facilities, and, in connection therewith, changing existing setback requirements to require any new oil and gas development facility to be located at least 4,000 feet from the nearest occupied structure and other specified areas; requiring a local government to prohibit any new occupied structure or other specified areas from being built or designated less than 4,000 feet from the nearest active oil and gas development facility; and authorizing the state or a local government to require new oil and gas development facilities to be located more than 4,000 feet from the nearest occupied structure?

GROUNDNS FOR RECONSIDERATION

I. The Initiative Impermissibly Contains Multiple Subjects.

The Colorado Constitution requires that a citizen initiated measure contain only a single subject, which shall be clearly expressed in its title. Colo. Const. art. V., § 1(5.5); see also C.R.S. § 1-40-106.5. The single-subject requirement prevents proponents from combining multiple subjects to attract a “yes” vote from voters who might otherwise vote “no” on one or more of the subjects if proposed separately. *Matter of Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 333 P.3d 76, 79 (Colo. 2014). Accordingly, an initiative’s subject matter “must be necessarily and properly connected rather than disconnected or incongruous.” *Id.* (citing *In re Proposed Initiative for 2011–2012 # 45*, 274 P.3d 576, 579 (Colo.2012)). Titles containing general “umbrella proposals” to unite separate subject are unconstitutional. *Id.* (citing *In re Proposed Initiative for 2011–2012 # 45*, 274 P.3d 576, 579 (Colo. 2012)).

Contrary to the requirement that every constitutional amendment proposed by initiative be limited to a single subject, which shall be clearly expressed in its title, the Board set title for initiative #77 despite the fact that it contains multiple, distinct and separate purposes that are not dependent upon or connected with each other. Specifically, under the umbrella of a creating a uniform “statewide setback requirement for oil and gas development facilities” the initiative actually includes the following several, unrelated subjects:

- (1) Imposing an increased, non-waivable, minimum setback requirement of 4,000 feet for new oil and gas development facilities from occupied structures (#77 § 3);
- (2) Imposing a new, minimum setback requirement of 4,000 feet for new oil and gas development facilities from “areas of special concern,” which includes public and community drinking water sources, lakes, rivers, perennial or intermittent streams, creeks, irrigation canals, riparian areas, playgrounds, permanent sports fields, amphitheaters, public parks, and public open space (#77 § 3);
- (3) Imposing an affirmative duty on local governments to restrict the construction of new occupied structures within 4,000 feet from existing oil and gas development facilities irrespective a local government’s existing authority to regulate the construction of new occupied structures (#77 § 4);
- (4) Imposing an affirmative duty on local governments to restrict the building or designation of new “areas of special concern,” including public and community drinking water sources, lakes, rivers, perennial or intermittent streams, creeks, irrigation canals, riparian areas, playgrounds, permanent sports fields, amphitheaters, public parks, and public open space, within 4,000 feet from existing oil and gas development facilities irrespective a local government’s existing authority to regulate the construction or designation of such areas (#77 § 4);

- (5) Authorizing state or local governments to impose setback distances greater than 4,000 feet and without limitation for new oil and gas development facilities from occupied structures and, thus, authorizing local government to ban oil and gas activities within their boundaries (#77 § 5); and
- (6) Creating a new classification of property called “areas of special concern,” which includes unrelated and disjointed types of property, including public and community drinking water sources, lakes, rivers, perennial or intermittent streams, creeks, irrigation canals, riparian areas, playgrounds, permanent sports fields, amphitheaters, public parks, and public open space (#77 § 2(4)).

Each of these subjects is not interdependent or connected to the other. The Title Board therefore lacks jurisdiction to set title and title setting should be denied.

II. The Title and Submission Clause as Drafted Fail to Describe Important Aspects of the Measure.

A measure’s title and submission clause must “correctly and fairly express the true intent and meaning” of the measure. C.R.S. § 1-40-106(3)(b). The title and submission clause should enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal. *In re Title, Ballot Title & Submission Clause for 2009–2010 No. 45*, 234 P.3d 642, 648 (Colo. 2010) “[A] material omission can create misleading titles.” *In re Title, Ballot and Submission Clause 1999–2000 #258A*, 4 P.3d 1094, 1098 (Colo. 2000).

The title and submission clause for measure #77 are misleading and confusing because they fail to describe important aspects of the measure. Among other defects, the title and submission clause:

- (1) Fail to reflect that the measure increases the current setback requirements for new oil and gas wells, production and processing facilities;
- (2) Fail to reflect the measure’s declaration, by the people of Colorado, that oil and gas development has detrimental impacts on public health, safety, welfare, and the environment (#77 § 1(a));
- (3) Improperly utilize a vague reference to “oil and gas development facilities,” a term that has no common meaning and fails to provide notice that the measure’s definition of oil and gas development facilities applies to oil and gas associated wells, production, and processing facilities (#77 § 2(2));

- (4) Fail to inform the voters of distinctions between measure 2015-2016 #77 and measure 2015-2016 #81, by failing to describe the difference between “oil and gas development facilities” and “wells associated with oil and gas development”;
- (5) Fail to provide notice of the property types included within the term “areas of special concern,” and instead stating that the setbacks are in relation to “other specified areas,” which does not put the voters on notice of anything (#77 § 2(4)); and
- (6) Fail to make clear that the measure authorizes state and local governments to impose setback requirements in excess of 4,000 feet and without limitation for new oil and gas development facilities from occupied structures (#77 § 5)).

Therefore, in the alternative, opponents request a title and submission clause that reflect these important aspects of the measure as set forth in the proposed title and submission clause, attached as Exhibit A.

CONCLUSION

Based on the foregoing, Mr. Martini and Mr. Prestidge request a rehearing of the Title Board for Initiative 2015-2016 #77. The initiative is incapable of being expressed in a single subject that clearly reflects the intent of the proponents, and therefore the Title Board lacks jurisdiction to set a title and should reject the measure. Alternatively, Mr. Martini and Mr. Prestidge respectfully request that the Title Board amend the title and submission clause consistent with the concerns set forth above and as set forth in Exhibit A.

Respectfully submitted this 10th day of February, 2016 by:

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Exhibit A

Ballot Title Setting Board

Proposed Initiative 2015-2016 #77

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning a minimum, non-waivable increase in the statewide setback requirement for oil and gas development facilities ~~associated wells, production, and processing facilities,~~ and, in connection therewith, declaring that oil and gas development has detrimental impacts on public health, safety, welfare, and the environment; changing the existing setback requirements to require anyall new oil and gas associated wells, production, and processing facilities ~~development facility~~ to be located at least 4,000 feet from the nearest occupied structure and other specified areas, including certain water sources, water bodies, and public places; requiring a local government to prohibit any new occupied structure or other specified areas, including certain water sources, water bodies, and public places, from being built or designated less than 4,000 feet from the nearest active oil and gas associated well, production, and processing facility ~~development facility~~; and authorizing the state or a local government to impose a setback in excess of 4,000 feet for ~~require~~ new oil and gas associated wells, production, and processing facilities ~~development facilities to be located more than 4,000 feet from the nearest occupied structure.~~

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning a minimum, non-waivable increase in the statewide setback requirement for oil and gas development facilities ~~associated wells, production, and processing facilities,~~ and, in connection therewith, declaring that oil and gas development has detrimental impacts on public health, safety, welfare, and the environment; changing the existing setback requirements to require anyall new oil and gas associated wells, production, and processing facilities ~~development facility~~ to be located at least 4,000 feet from the nearest occupied structure and other specified areas, including certain water sources, water bodies, and public places; requiring a local government to prohibit any new occupied structure or other specified areas, including certain water sources, water bodies, and public places, from being built or designated less than 4,000 feet from the nearest active oil and

~~gas associated well, production, and processing facility development facility; and authorizing the state or a local government to impose a setback in excess of 4,000 feet for require new oil and gas associated wells, production, and processing facilities development facilities to be located more than 4,000 feet from the nearest occupied structure?~~