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**BEFORE THE COLORADO BALLOT TITLE SETTING BOARD**

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IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE  
2015-2016 #75

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**MOTION FOR REHEARING**

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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 #75. 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 the local government regulation of oil and gas development and, in connection therewith, authorizing local governments to prohibit, limit, or impose moratoriums on oil and gas development; authorizing local laws and regulations that are more restrictive of oil and gas development and at least as protective of a community's health, safety, welfare, and environment as state law; and exempting from preemption by the state any local laws that prevent or mitigate local impacts from oil and gas development.

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

Shall there be an amendment to the Colorado constitution concerning the local government regulation of oil and gas development and, in connection therewith, authorizing local governments to prohibit, limit, or impose moratoriums on oil and gas development; authorizing local laws and regulations that are more restrictive of oil and gas development and at least as protective of a community's health, safety, welfare, and environment as state law; and exempting from preemption by the state any local laws that prevent or mitigate local impacts from oil and gas development?

**GROUND 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 #75 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 “local government regulation of oil and gas development” the initiative actually includes the following several, unrelated subjects:

- (1) Granting local governments the authority to regulate oil and gas development in a way that is more restrictive than state laws, but must not be less protective of the community’s health, safety, general welfare, and environment than state laws (#75 § 3(1));
- (2) Authorizing local governments to completely ban oil and gas development within certain geographic areas (#75 § 3(1));
- (3) Exempting from preemption by the state any local laws intended to “mitigate local impacts from oil and gas development,” irrespective of whether such laws are enacted pursuant to the authority conferred upon local governments in Subsection 3(1) or are otherwise connected to the initiative’s central purpose of regulating oil and gas development (#75 § 3(2)); and
- (4) Curtailing the State’s advancement of its own interests by prohibiting the State from impeding local governments’ efforts to prevent and mitigate local impacts from oil and gas development (#75 § 1(c)).

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 #75 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 authority of local governments to enact laws that prohibit or limit oil and gas development;

(2) Fail to state that the measure declares on behalf of the people of Colorado that oil and gas development has “detrimental impacts on public health, safety, general welfare, and the environment” (#75 § 1(a));

(3) Fail to make clear that the measure prohibits local laws and regulations that are “less protective” of a community’s health, safety, welfare, and environment than state law (#75 § 3(1)); and

(4) Fail to reflect that the measure prioritizes local control of oil and gas development over matters of state interest and matters of statewide concern (#75 § 1(c)).

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 #75. 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 10<sup>th</sup> day of February, 2016 by:

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# EXHIBIT A

## Ballot Title Setting Board

### Proposed Initiative 2015-2016 #75

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

An amendment to the Colorado constitution ~~concerning increasing the local governments' authority to regulation regulate~~ of oil and gas development and, in connection therewith, ~~declaring that oil and gas development has detrimental impacts on public health, safety, general welfare, and the environment~~; authorizing local governments to prohibit, limit, or impose moratoriums on oil and gas development; authorizing local laws and regulations that are more restrictive of oil and gas development; ~~prohibiting such local laws and regulations that are less and at least as protective of a community's health, safety, welfare, and environment as than~~ state law; ~~and exempting from preemption by the state any local laws and regulations that prevent or mitigate local impacts from oil and gas development even as to matters of statewide concern and even if the local laws materially impede a state interest~~; and ~~preventing state government from impeding the efforts of local governments to prevent and mitigate impacts from oil and gas development.~~

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 increasing the local governments' authority to regulation regulate~~ of oil and gas development and, in connection therewith, ~~declaring that oil and gas development has detrimental impacts on public health, safety, general welfare, and the environment~~; authorizing local governments to prohibit, limit, or impose moratoriums on oil and gas development; authorizing local laws and regulations that are more restrictive of oil and gas development; ~~prohibiting such local laws and regulations that are less and at least as protective of a community's health, safety, welfare, and environment as than~~ state law; ~~and exempting from preemption by the state any local laws and regulations that prevent or mitigate local impacts from oil and gas development even as to matters of statewide concern and even if the local laws materially impede a state interest~~; and ~~preventing state government from impeding the efforts of local governments to prevent and mitigate impacts from oil and gas development?~~