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COLORADO TITLE SETTING BOARD

Colorado Secretary of State

**IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR PROPOSED INITIATIVE 2017-2018 #178**

MOTION FOR REHEARING ON PROPOSED INITIATIVE 2017-2018 #178

On behalf of Janette S. Rose, a registered elector of the State of Colorado, undersigned counsel hereby submits to the Title Board this Motion for Rehearing on Proposed Initiative 2017-2018 #178 (“Initiative #178”) pursuant to Section 1-40-107, C.R.S. (2017), and as grounds therefore states as follows:

I. THE TITLE SET BY TITLE BOARD AT THE APRIL 18, 2018 HEARING

On April 18, 2018, the Title Board set the following ballot title and submission clause for Initiative #178:

Shall there be an amendment to the Colorado constitution concerning the scope of state and local governmental authority to regulate oil and natural gas development, and, in connection therewith, affirming the authority of local governments to regulate certain surface aspects of such development so long as the regulation does not conflict with state law, unreasonably restrict a property owner’s access to the owner’s surface or mineral property, or impose technically or economically unfeasible conditions on access or development?

II. GROUND 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 serves two functions. First, the single subject requirement “is intended to ensure that each proposal depends upon its own merits for passage.” *Johnson v. Curry (In re Title, Ballot Title & Submission Clause for 2015-2016 #132)*, 374 P.3d 460, 465 (Colo. 2016). Second – and as pertinent here – 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.* “If an initiative advances separate and distinct purposes, the fact that they both relate to the same general concept or subject is insufficient to satisfy the single subject requirement.” *Id.*

Initiative #178 contains at least three 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:

First, sections 1(1)(b) and 2(1) of the measure limit and – by section 3 expressly supersede – the application of Colo. Const. art. XX, §6 (“Home rule for cities and towns”), as interpreted and applied by the Colorado Supreme Court in *City of Longmont v. Colo. Oil & Gas Ass’n*, 369 P.3d 573 (Colo. 2016), and *City of Fort Collins v. Colo. Oil & Gas Ass’n*, 360 P.3d 586 (Colo. 2016), to “regulation of *certain surface aspects*” of oil and natural gas development. The result is an express or implied constriction upon current local governmental authority to regulate other aspects of oil and natural gas development.

Second, section 2(2) of the measure imposes new standards for the imposition of fees by local governments in connection with the regulation of oil and gas development, thereby revising the criteria for the levying of governmental fees as established by the Colorado Supreme Court in *Tabor Foundation v. Colorado Bridge Enterprise*, 353 P.3d 896 (Colo. 2014), *Barber v. Ritter*, 196 P.3d 238 (Colo. 2008), and *Bloom v. City of Fort Collins*, 784 P.2d 304 (Colo. 1989).

Third, section 2(3) of the measure imposes new restrictions upon *both state and local* governments in the context of regulating a property owner’s access to surface or mineral interests by way of regulation of oil and natural gas development and production.

Each of these purposes is couched in a measure that at first read would appear to be granting or enhancing local governmental regulatory authority with regard to oil and natural gas production – when in fact very much the opposite is true. This is the classic “coiled up in the folds” scenario whereby the voting public is being affirmatively misled by the language of both the title and the measure itself. *See, e.g., Johnson, supra; In re Title & Ballot Title & Submission Clause for Initiative 2001-2002 #43*, 46 P.3d 438, 446 (Colo. 2002).

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 #178 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 of Initiative #178 does not apprise the voters that (1) the measure’s “affirmation” of local governmental regulatory authority would in fact *constrict* that authority as currently recognized – *cf., In re Title, Ballot Title, Submission Clause & Summary Pertaining to a Proposed Initiative on “Obscenity,”* 877 P.2d 848 (Colo. 1994); (2) the measure would effectively supersede a separate constitutional provision regarding home rule governmental authority in the area of oil and gas regulation; (3) the measure would restrict *state* governmental regulatory authority affecting a property owner’s access to surface or mineral interests; and (4)

the measure would impose new limitations upon the assessment by local governments of fees for inspection and monitoring of oil and gas development.

The title does not enable voters to make an informed choice because it does not correctly and fairly express – and in fact obfuscates – the true intent and meaning of the measure.

III. CONCLUSION

Based on the foregoing, Janette S. Rose requests a rehearing of the Title Board for Initiative 2017-2018 #178, because the initiative contains multiple subjects, and the title is misleading to voters as 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 25th day of April, 2018.

s/Edward T. Ramey

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 25th day of April, 2018, a true and correct copy of **MOTION FOR REHEARING ON PROPOSED INITIATIVE 2017-2018 #178** was filed and served to the following:

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