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Colorado Secretary of State

COLORADO TITLE SETTING BOARD

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IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE  
FOR INITIATIVE 2017-2018 # 20

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**MOTION TO DISMISS FRIVOLOUS MOTION FOR REHEARING AND REQUEST  
FOR SANCTIONS**

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On behalf of Andrew J. O'Connor and Mary E. Henry, co-sponsors of Ballot Initiative 2017-2018 #20, the undersigned counsel hereby submits this Motion to Dismiss Frivolous Motion for Rehearing and Request for Sanctions and as grounds therefore states as follows:

1. On April 26, 2017, counsel for Objector (hereinafter "counsel") filed a frivolous Motion for Rehearing which is substantially frivolous, groundless and vexatious and counsel should be sanctioned accordingly, including, but not limited to dismissing Motion for Rehearing and awarding attorney's fees and costs pursuant to Section 13-17-101 C.R.S.

2. Section 13-17-101 C.R.S., provides for award of attorney's fees and costs when a claim or defense is substantially frivolous, groundless and vexatious and is not supported by credible evidence. Counsel's Motion for Rehearing is basically an appeal of the Title Board action of April 7, 2017, granting jurisdiction and setting title on Ballot Initiative 2017-2018 #20. Counsel's Motion for Rehearing fails to set forth, in a manner consistent with Section 1-40-107, C.R.S., a coherent assertion of lack of jurisdiction and error by the Title Board supported by legal authority. As a result, it is appropriate to assess attorney's fees and costs against counsel prosecuting the Motion for Rehearing. *Castillo v. Koppes-Conway*, 148 P.3d 289 (Colo. App. 2006).

3. On April 7, 2017, the Title Board acted properly in granting jurisdiction and setting title on Ballot Initiative 2017-2018 #20. Counsel's Motion for Rehearing fails to set forth, in a manner consistent with Section 1-40-107, C.R.S., It is well established in Colorado that it is in the interest of public policy for the Title Board to confer jurisdiction on citizen ballot initiatives. Provisions relating to the initiative should be liberally construed to permit, if possible, the exercise by the electors of this more important privilege. *Brownlow v. Wunch*, 103 Colo. 120, 83 P.2d 775 (1938); *Say v. Baker*, 137 Colo. 155, 322 P.2d 317 (1958).

4. Counsel's Motion for Rehearing is substantially frivolous, groundless and vexatious because it challenges the validity and constitutionality of Ballot Initiative 2017-2018 #20. No discretion rests with administrative officials to pass on the validity of an act proposed by the people. *City of Rocky Ford v. Brown*, 133 Colo. 262, 293 P.2d 974 (1956).

5. The Title Board's action on April 7, 2017, and Ballot Initiative 2017-2018 #20, are presumed to be valid by operation of law. In fact, a proposed ordinance is clothed with the presumption of validity and its constitutionality will not be considered by the courts by means of a hypothetical question, but only after enactment. *City of Rocky Ford v. Brown*, 133 Colo. 262,

293 P.2d 974 (1956).

6. On April 5, 2017, Colorado Legislative Counsel and the Office of Legislative Legal Services filed Memorandum in order to review and comment on Proposed Ballot Initiative 2017-2018 #20, pursuant to Section 1-40-105 (1) C.R.S. Co-sponsors reviewed comments and worked with staff at the Title Board and made suggested edits and corrections and submitted final version. On April 7, 2017, the Title Board acted properly in granting jurisdiction and setting title on Ballot Initiative 2017-2018 #20 and rejected counsel's arguments that any substantive changes were made. Counsel is attempting to re-litigate issues in their Motion for Rehearing that they lost on April 7, 2017. Said Motion for Rehearing was filed in bad faith and is substantially frivolous, groundless and vexatious and counsel should be sanctioned accordingly, including, but not limited to dismissing Motion for Rehearing and awarding attorney's fees and costs pursuant to Section 13-17-101 C.R.S. Where changes in final version of initiative submitted to secretary of state were in direct response to substantive questions and comments raised by directors of the legislative council and the office of legislative legal services, the proponents of the initiative were not required to resubmit the initiative to the directors. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

7. The Co-sponsors substantial complied with the requirements of Section 1-40-107, C.R.S., and the Title Board acted properly on April 7, 2017, by granting jurisdiction and setting title on Ballot Initiative 2017-2018 #20 and counsel's Motion for Rehearing lacks substantial justification, is groundless, frivolous and vexatious and counsel should be sanctioned accordingly. C.R.S. § 13-17-102; *Castillo v. Koppes-Conway*, 148 P.3d 289 (Colo. App. 2006).

8. This Title Board can and should consider the frivolous, groundless and vexatious and bad faith misconduct of counsel under C.R.S. § 13-17-102 as follows:

- a. the extent of any effort made to determine the validity of any action or claim before the action or claim was asserted;
- b. the extent of any effort made after the commencement of an action to reduce the number of claims or defenses being asserted or to dismiss claims or defenses found not to be valid within an action; and
- c. the availability of facts to assist a party in determining the validity of a claim or defense. C.R.S. § 13-17-102; *Bilawsky v. Faseehudin*, 916 P. 2d 586 (Colo. App.1995).

9. Counsel acted in bad faith, deceptively and unethically in violation of Colorado Rules of Professional Conduct and should be sanctioned for making material misrepresentations regarding mediation and for filing a frivolous Motion for Rehearing. Counsel's misconduct is frivolous, groundless and vexatious. *Int'l Tech. Instruments, Inc. v. Eng'g Measurements, Inc.*, 678 P.2d 558 (Colo. App. 1983).

10. Counsel's aforementioned misconduct, material misrepresentations, pleadings and bad faith arguments made in Motion for Rehearing are frivolous, groundless and vexatious and counsel should be sanctioned accordingly. A vexatious claim is one brought or maintained in bad faith to annoy or harass and may include conduct that is arbitrary, abusive, stubbornly litigious or

disrespectful of truth. *Bockar v. Patterson*, 899 P.2d 233 (Colo. App. 1994).

11. Counsel's Motion for Rehearing lacks substantial justification, is groundless, frivolous and vexatious pursuant to C.R.S. § 13-17-103 and was filed in violation of C.R.C.P., Rule 11. Counsel should be sanctioned and Motion for Rehearing should be dismissed and an award of attorney's fees and costs should be entered in favor of Co-sponsors because of counsel's violation of Rule 11 and imposition of sanctions are within the Title Board's discretion. *Carder, Inc., v. Cash*, 97 P.3d 174 (Colo. App. 2003).

Based upon the foregoing, Co-sponsors Andrew J. O'Connor and Mary E. Henry, respectfully requests that Motion for Rehearing be dismissed and that counsel be sanctioned including, but not limited to, an award of attorney's fees and costs.

Respectfully submitted this 26<sup>th</sup> day of April, 2017.

/s/ Andrew J. O'Connor  
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