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COLORADO TITLE SETTING BOARD **Colorado Secretary of State**

IN THE MATTER OF THE BALLOT TITLE AND SUBMISSION CLAUSE FOR
INITIATIVE 2019-2020 #177

MOTION FOR REHEARING

On behalf of John Justman, a registered elector in Mesa County, the undersigned counsel hereby submits this Motion for rehearing pursuant to C.R.S. 1-40-107 (1)(a)(I). As grounds therefore objector states the following:

A. BACKGROUND

Initiative 2019-2020 #177 closely tracks initiative 2017-2018 #97. The measure changes the designates additional “vulnerable areas”, changes the setback to 2000 feet and allows a limited homeowner waiver. The Colorado electorate had an opportunity to vote on a similar measure in 2018. It was soundly defeated by a margin of 55.12% to 44.88%. Despite this ten-point loss and a sweeping overhaul of oil and gas regulations enacted by the general assembly in the 2019 session, the proponents are back with precisely the same initiative.

In 2018 the title set was as follows:

A change to the Colorado Revised Statutes concerning a statewide minimum distance requirement for new oil and gas development, and, in connection therewith, changing existing distance requirements to require that any new oil and gas development be located at least 2,500 feet away from any structure intended for human occupancy and any other area designated by the measure, the state, or a local government and authorizing the state or a local government to increase the minimum distance requirement.

After a hearing on February 5, 2020 the title board set the same title for Initiative 2019-2020 #177:

A change to the Colorado Revised Statutes concerning a statewide minimum distance requirement for new oil and gas development, and, in connection therewith, changing existing distance requirements to require that any new oil and gas development be located at least 2,000 feet away from any structure intended for human occupancy and any other area designated by the measure; authorizing the state or a local government to increase the minimum distance requirement; and allowing a homeowner to waive the minimum distance requirement for the owner’s single-family principal residence.

While single subject and the fiscal impact of initiative #97 was appealed in 2018, the board cannot rely on that as precedent as the Objector in this action is alleging unique grounds. Specifically, that the dramatic changes to oil and gas regulations in Colorado over the past year cannot now be set aside in a single initiative.

B. PROPOSED INITIATIVE #177 CONTAINS MULTIPLE SUBJECTS IN VIOLATION OF THE SINGLE-SUBJECT REQUIREMENT.

1. Initiative #177 Contains Multiple Subjects Separate from the Measure's Setback Requirement.
 - a. The initiative takes away local government authority granted in Senate Bill 19-181 to regulate oil and gas operations in a reasonable manner in the following areas:
 - i. Land use;
 - ii. Location and siting;
 - iii. Impacts to public facilities and services
 - iv. Water quality and source, noise, vibration, odor, light, dust, emissions and air quality, land disturbance, reclamation procedures, cultural resources, emergency preparedness and coordination with first responders, security , and traffic and transportation impacts;
 - v. financial securities, indemnification, and insurance as appropriate to ensure compliance with the regulations of the local government;
 - vi. all other nuisance-type effects of oil and gas development; and
 - vii. Regulate the use of land and protection of the environment¹;
 - b. The initiative's setback requirement is an effective ban on new and gas development;
 - c. The initiative's setback requirement is a taking of property;
 - d. The initiative alters the relationship of local governments to control land use within its borders;
 - e. The initiative removes the state's power to permit an efficient rate of production, subject to the protection of public health, safety, and welfare, the environment and wildlife resources;
 - f. The initiative repeals local ordinances that have been enacted in response to SB 19-181;
 - g. The initiative repeals administrative rules that have been passed by the state in response to SB 19-181; and

¹ C.R.S. 29-20-104.

h. The initiative repeals current rules related to setback waivers.

C. THE FISCAL IMPACT STATEMENT AND ABSTRACT FAIL TO COMPLY WITH THE REQUIREMENTS OF SECTION 1-40-105.5 BY PROVIDING VOTERS WITH NO MEANINGFUL INFORMATION AND ARE MISLEADING AND PREJUDICIAL.

The fiscal impact statement and abstract fail to provide the information required by statute. The objector challenges the abstract on three grounds:

1. Abstracts may not be indeterminant; they must provide some meaningful information;
2. The abstract does not comply with C.R.S. 1-4-105.5; and
3. The abstract is misleading and prejudicial.

D. THE TITLE IS MISLEADING

The Title's description of the homeowner waiver is misleading and fails to advise the voters of its central features.

Wherefore the Objector requests that this Motion for Rehearing be granted and rehearing set pursuant to C.R.S. 1-40-107(1)

Submitted this 12th day of February 2020.

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