

SUPREME COURT OF COLORADO
2 East 14th Avenue
Denver, Colorado 80203

Original Proceeding
Pursuant to §1-40-107(2), C.R.S. (2013)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiatives 2013-
2014 #85, #86, and #87

Petitioners/Cross-Respondents: MIZRAIM
CORDERO and SCOTT PRESTIDGE

v.

Respondents/Cross-Petitioners: CAITLIN
ANNE LEAHY and GREGORY M. DIAMOND

and

Title Board: SUZANNE STAIERT; DANIEL
DOMENICO; and JASON GELENDER

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Supreme Court Case No.
14SA116 - Initiative #85
14SA119 - Initiative #86
14SA122 - Initiative #87

**RESPONDENTS/CROSS-PETITIONERS' RESPONSE TO MOTION FOR
LEAVE TO FILE SUPPLEMENTAL INFORMATION AND
SUPPLEMENTAL INFORMATION**

Caitlin Anne Leahy and Gregory M. Diamond (jointly “Respondents/Cross-Petitioners” or “Proponents”), registered electors of the State of Colorado, through their undersigned counsel, and pursuant to C.A.R. 27(a), respectfully submit this Response to the Motion for Leave to File Supplemental Information and the Supplemental Information filed by Petitioners Mizraim Cordero and Scott Prestidge regarding the title, ballot titles and submission clauses (the “Titles”) set by the Ballot Title Setting Board with regard to Proposed Initiative 2013-2014 #85 (“Initiative #85), Proposed Initiative 2013-2014 #86 (“Initiative “86”), and Proposed Initiative 2013-2014 #87 (“Initiative #87”) (jointly the “Initiatives”).

Respectfully, Petitioners’ supplemental facts are inaccurate and should be disregarded. Despite media reports and the Petitioners’ reliance on them, Proponents have not circulated petitions for Initiative #85, nor will they until after this Court rules on the ballot title challenges for Initiatives #85, #86 and #87, and the Proponents make a final decision on which measure to pursue to the ballot. Proponents are presently circulating petitions for Initiative #88, and for Initiative #89, which is an entirely unrelated measure. Proponents have obtained petition format approvals for Initiatives #85-#87, so that when this Court rules, proponents can make decisions about how to move forward without waiting several days to get petition formats approved. There is no prohibition on obtaining petition format

approval for more than one ballot measure or before approval by this Court. *See Armstrong v. Davidson*, 10 P.3d 1278, 1281 (Colo. 2000).

Proponents have repeatedly represented to the Title Board and to this Court, and reiterate here, that they will only proceed to the ballot with one measure of the variations contained in Initiatives #85-#88, and they will not circulate petitions for more than one setback measure at any time. If, after this Court rules on Initiatives #85-#87, Proponents determine that they will move forward with a measure other than Initiative #88, then they will withdraw Initiative #88 before commencing to circulate petitions on another measure. Proponents are not “playing a shell game,” but are rather in compliance with section 1-40-107(4), C.R.S., because the titles and submission clause were fixed and determined per §1-40-106 and §1-40-107, C.R.S., prior to any petition circulation. *See Armstrong v. Davidson*, 10 P.3d at 1281. Rather, Proponents are merely attempting to work within the time constraints imposed by section 1-40-108, C.R.S., and time is running short.

Aside from the factual errors cited by Petitioners in support of their request for relief, Petitioners’ contention that the Title Board erred by setting conflicting titles in this matter is not supported by the plain language of the Titles for Initiatives #85-#88. Though each measure would create a statewide setback requirement for new oil and gas wells from occupied structures, the differing

specifics of each measure – the precise length of the setback, the inclusion or omission of a takings exclusion, and the waiver authorization – are spelled out prominently and clearly in each of the short Titles. None of the Titles read the same – each clearly “distinguish[es] between overlapping or conflicting proposals.” *In re Initiative Concerning “Fair Treatment II”*, 877 P.2d 329, 332 (Colo. 1994). Each Title “accurately reflect[s] the distinctions between the measures” and would enable the voter to readily distinguish between them. *In re Initiative for 2007-2008 #61*, 184 P.3d 747, 752 (Colo. 2008).

Finally, even were the Proponents to attempt to place more than one of these measures on the ballot - which they do not intend to do - “nothing prevents two conflicting amendments from being proposed or even adopted at the same election.” *In re Initiative Concerning “Fair Treatment II”*, 877 P.2d 329, 332 (Colo. 1994). “What is prohibited are conflicting ballot titles which fail to distinguish between overlapping or conflicting proposals.” *Id.* These short and easily readable ballot titles clearly distinguish between the alternative measures.

The Proponents respectfully request that the Court reject the assertions of the Petitioners, and instead affirm the actions of the Title Board with regard to Proposed Initiatives 2013-2014 #85, #86, and #87, except that they request the Court to reverse the actions of the title Board with regard to Proposed Initiatives

2013-2014 #86 and #87 for the sole purpose of remanding those measure to the Title Board with a direction to restore the complete phrase “any new oil and gas well, including those using hydraulic fracturing” to the Titles.

Respectfully submitted this 19th day of June, 2014.

s/Martha M. Tierney

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of June, 2014, a true and correct copy of the foregoing **RESPONDENTS/CROSS-PETITIONERS' RESPONSE TO MOTION FOR LEAVE TO FILE SUPPLEMENTAL INFORMATION AND SUPPLEMENTAL INFORMATION** was filed and served via the Integrated Colorado Courts E-filing System, to the following:

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