

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A. R. 32, including all formatting requirements set forth in these rules.

Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g):

- ☐ It contains _____ words.
- ☒ It does not exceed 30 pages.

The brief complies with C.A.R. 28(k):

☒ For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R.__P.__), not to an entire document, where the issues was raised on rule on.

☐ For the party responding to the issue:

It contains under a separate heading, a statement of whether each party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

☒ I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

s/ Richard C. Kaufman

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I. STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the Title Board lacked jurisdiction to set title because the Proposed Initiative impermissibly contains multiple subjects in violation of the Colorado Constitution and applicable statutes.
2. Whether the Title Board erred in setting a title that is so vague that the title does not encompass and reflect the purpose of the proposal and is misleading to voters.

II. STATEMENT OF THE CASE

This case is an appeal of a ballot title setting by the Title Board pursuant to C.R.S. § 1-40-107(2).

Bruce Mason and Karen Dike (hereinafter “Proponents”) are the designated proponents of Proposed Initiative 2015–2016 #63 (“Right to a Healthy Environment”) (hereinafter “Initiative”). Proponents submitted a final version of the Initiative to the Secretary of State on January 8, 2016 for purposes of having the Title Board set title. *See* Final 2015–2016 #63, attached as Exhibit A. The Secretary of State or his designee is a member of the Title Board. The review and comment hearing required by C.R.S. § 1-40-105(1) was conducted by the Offices of Legislative Council and Legislative Legal Services on January 5, 2016.

The Title Board considered the Initiative at its January 20, 2016 meeting and set the following title:

An amendment to the Colorado constitution concerning natural persons' fundamental right to a healthy environment and, in connection therewith, requiring state and local governments to assign the highest priority to protecting a healthy environment; allowing local governments to enact laws that are protective of a healthy environment; stating that such a local law governs over a state law that is less protective of a healthy environment; allowing natural persons and governmental entities to sue to enforce the fundamental right to a healthy environment; and awarding reasonable costs of litigation upon determination that a violation has occurred.

See Ballot Title Setting Board, Proposed Initiative 2015 –2016 #63 (January 20, 2016), attached hereto as Exhibit B.

On January 27, 2016, Petitioners timely filed a Motion for Rehearing pursuant to C.R.S. § 1-40-107(1)(a), alleging that (1) the proposed Initiative violated the single subject requirement contained within the article V, § 1(5.5) of the Colorado constitution and C.R.S. § 1-40-106.5; and (2) that the Initiative's title did not accurately reflect the subject matter of the Initiative as required by C.R.S. § 1-40-106(3)(b) and (c) which rendered the title misleading. *See* Motion for Rehearing, attached hereto as Exhibit C. On January 26, 2016, a separate Petitioner, Douglas Kemper, filed an additional Motion for Rehearing pursuant to C.R.S. § 1-40-107(1)(a) alleging similar concerns. *See* Motion for Rehearing, attached hereto as Exhibit D. The Title Board considered both Petitioners' Motions at its February 3, 2016 meeting. The Motions for Rehearing were granted to the extent that the Title

Board made changes to the titles but were denied in all other respects. The title as set by the Title Board at the February 3, 2016 hearing was as follows:

An amendment to the Colorado constitution concerning natural persons' fundamental right to a healthy environment and, in connection therewith, defining "healthy environment" as safe and sustainable conditions for human life, including healthy air, water, land, and ecological systems; requiring state and local governments to assign the highest priority to protecting a healthy environment; allowing local governments to enact laws that are protective of a healthy environment; stating that such a local law governs over a state law that is less protective of a healthy environment; allowing natural persons and governmental entities to sue to enforce the fundamental right to a healthy environment; and awarding reasonable costs of litigation upon determination that a violation has occurred.

See Ballot Title Setting Board, Proposed Initiative 2015–2016 #63 (February 3, 2016), attached hereto as Exhibit E (hereinafter "Title").

As the Initiative does not comply with the single subject requirement and the Title continues to be misleading notwithstanding the Title Board's changes, Petitioners timely submitted this matter to the Colorado Supreme Court for review pursuant to C.R.S. § 1-40-107(2).

III. STATEMENT OF FACTS

Initiative #63 seeks to amend the Bill of Rights contained in article II of the Colorado Constitution by adding a new section X which would essentially create a new right – a right to a healthy environment as "an inherent inalienable and inalienable right." Ex. A, p. 1. The Initiative defines a healthy environment as one with "safe and sustainable conditions for life, including healthy air, water, land,

and ecological systems.” *Id.* The Initiative defines local government and then assigns to both the state government and local governments the duty to prioritize “a healthy environment” over all other rights. *Id.* The Initiative allows both the state government and local governments to enact statutes or ordinances to protect a healthy environment while establishing a new preemption regime between state and local laws. *Id.* Where more than one statute or ordinance “addresses the same topic,” the one that is more protective of the environment “shall govern”. *Id.* In its penultimate section, the Initiative establishes an enforcement regime that allows state and local governments, as well as individuals, to enforce this new “healthy environment” right through actions in law and equity, including with punitive damages in situations where there is a finding of “reckless disregard,” and with attorney’s fees and costs. Ex. A, p. 1-2. The Initiative applies this new right to every level of government in Colorado “notwithstanding any provision of article XX or section 16 of article XIV of the Colorado Constitution.” *Id.* at p.2.

IV. SUMMARY OF THE ARGUMENT

The Title Board abused its discretion by setting a Title for the Initiative that includes multiple subjects which are unrelated and not dependent on each other. Beyond the primary subject of establishing a new “inherent, indefeasible, and inalienable right to a healthy environment” in the Bill of Rights, the Initiative includes subjects concerning the establishment of a new legal status for local

governments in relation to Article XX and section 16 of Article XIV of the Colorado Constitution, modifying the existing preemption regime, re-prioritizing of rights under the Bill of Rights, and the establishment of new enforcement powers for individuals and governments. Because the other subjects are unrelated or not dependent upon a right to a healthy environment, the Title Board abused its discretion when it set title.

In addition, the Title and ballot submission clause are vague and misleading and do not reflect the purpose of the proposed Initiative. The term “healthy environment” found in both the Initiative and the Title is an impermissible catch phrase which creates prejudice in favor of the Initiative. The Title includes the terms “protective of a healthy environment” and “highest priority” which are vague and misleading with regard to other rights found in the Bill of Rights in the Colorado Constitution. Moreover, the Title defines “healthy environment” as “*including* healthy air, water, land, and ecological systems” which suggests that there are additional subjects that could be added to that list which are not delineated for voters up front

V. STANDARD OF REVIEW AND PRESERVATION OF THE ISSUE

When reviewing a challenge to the Title Board’s decision to set the title and ballot title and submission clause for an initiative, the Court will “employ all legitimate presumptions in favor of the propriety of the Board’s actions.” *In re*

Title, Ballot Title, Submission Clause for 2009–2010 # 45, 234 P.3d 642, 645 (Colo. 2010). While the Court does not consider the merits of a particular initiative or its application, the Court examines the text “to determine whether the initiatives and their titles comport with the single-subject and clear title requirements.” *In re Title, Ballot Title, Submission Clause for 2013-2014 #85*, 328 P.3d 136, 141-42 (Colo. 2014). When determining whether an initiative is vague or misleading, Court applies general rules of statutory construction and gives the language of the initiative its plain meaning. *In re Title, Ballot Title, and Submission Clause for 2007–2008 #17 (New State Dep’t & Elected Bd. for Env’tl. Conservation)*, 172 P.3d 871, 874 (Colo. 2007).

Petitioners’ raised the single subject requirement in Petitioners’ Motion for Rehearing on January 27, 2016. *See* Ex. C, p.1-2. Petitioners’ further presented this issue to the Court pursuant to C.R.S. § 1-40-107(2). *See* Petition for Review of Final Action (February 10, 2016), attached hereto as Exhibit F.

VI. ARGUMENT

A. Initiative #63 Violates the Colorado Constitution and State Statutes by Containing Multiple Subjects.

1. Legal Standard.

Article V, section 1(5.5) of the Colorado Constitution requires that “[n]o measure shall be proposed by petition containing more than one subject.” In addition, the legislature has directed that “[i]t is the intent of the general assembly

that section 1(5.5) of article V and section 2(3) of article XIX be liberally construed, so as to avert the practices against which they are aimed and, at the same time, to preserve and protect the right of initiative and referendum.” C.R.S. § 1-40-106.5(2).

The single subject requirement protects voters from an all-or-nothing decision on an initiative that joins multiple, separate subjects and poses a danger of voter surprise and fraud. *In re Title, Ballot Title, and Submission Clause for 2009–2010*, #24, 218 P.3d 350, 353 (Colo. 2009). An initiative that carries out “one general, broad objective or purpose” will not violate this constitutional rule. *In re #45*, 234 P.3d at 646. Additionally, an initiative may contain several purposes as long as they are interrelated and directly tied to the initiative’s central focus in such a way that they avoid the single-subject requirement. *Id.* Contrastingly, “[a] proponent’s attempt to characterize a proposed initiative under ‘some overarching theme’ will not save the measure if it contains separate and unconnected purposes.” *In re Title, Ballot Title, Submission Clause for 2011–2012 #45*, 274 P.3d 576, 581 (Colo. 2012). Thus, where an initiative contains “multiple, discrete, unconnected purposes,” it violates the single subject requirement. *In re Title, Ballot, Submission Clause for 2013–2014 #89*, 328 P.3d 172, 177 (Colo. 2014).

2. The Title Board's Determination Violated the Single Subject Standard.

The Initiative contains multiple and disconnected subjects which requires reversal of the Title Board's action. Although the primary purpose of the Initiative appears to be establishing a right to a healthy environment, the Initiative actually contains four other separate subjects which violate the central purpose of the single subject rule to "apprise voters of the subject of each measure, so that surreptitious measures that could result in voter surprise or fraud are not placed on the ballot." *In re #17*, 172 P.3d 871 at 875-76 . Those four subjects do not have a "necessary and proper relationship" to the subject of a right to a healthy environment. *In re Title, Ballot Title & Submission clause, Summary Clause for 1997–1998 #74*, 962 P.2d 927, 929 (Colo. 1998).

In the first instance, the Initiative contains a provision that rearranges the legal status of local governments under Article XX and section 16 of Article XIV of the Colorado Constitution. The Initiative redefines "local governments" by exempting each "home rule county, city and county, city, or town" from the provisions and limitations found in Article XX or section 16 of Article XIV of the Colorado Constitution. These separate goals of, on the one hand, establishing a right to a healthy environment and, on the other hand, redefining the authority of local government, are not dependent upon each other. The redefinition of the authority of home rule local governments is not related to the central purpose of

the Initiative and therefore violates the single subject standard. *In re Title, Ballot Title & Submission Clause, & Summary for Proposed Petitions*, 907 P.2d 586, 590-91 (Colo. 1995).

In the second instance, section 32(3) of the Initiative establishes an “inherent, infeasible, and inalienable right to a healthy environment” and characterizes it as a “fundamental right of natural persons.” However, subsection (4) goes on to prioritize this new addition to the Bill of Rights found in Article II of the Colorado Constitution as the one right which deserves “the highest priority” for government protection, even above the other rights found in Article II. Aside from the confusion this may cause individual electors when they find that their freedom of speech, religion, property rights and other rights presently protected by the Bill of Rights are subordinate to the new right to a healthy environment, this also presents two separate subjects that are not dependent upon each other. Although it may appear superficially related, adding a new right to the Colorado Bill of Rights is a completely separate subject from the prioritization and subordination of constitutional rights. *In re Proposed Initiative 1996-4*, 916 P.2d 528, 532 (Colo. 1996) (“Grouping the provisions of a proposed initiative under a broad concept that potentially misleads voters will not satisfy the single subject requirement.”). Coiled within this seemingly straightforward provision is the notion that all other constitutional rights, statutes, charter provisions and ordinances are subordinate to

environmental concerns, including the regulation of business entities and the exercise of all other legal rights by individuals or entities. The facial simplicity hides the complexity and reach of the Initiative and therefore will, if inadvertently, cause voter fraud and surprise in violation of the single subject rule. *In re 17*, 172 P.3d at 873-74.

In the third instance, the Initiative would revamp the law of preemption in two ways. Section 32(5) allows all local government charter provisions and ordinances to preempt state statutes, and it redefines preemption in terms of the breadth and restrictiveness of a charter provision or ordinance. Existing law on preemption, based around the well-understood concepts of express, implied, or operational conflict, would therefore be replaced by an undefined analysis of whether a charter provision or ordinance is more “protective” of a “healthy environment” than a state statute. To establish a new right in the Bill of Rights it is not necessary to amend or add new preemption concepts, let alone replace the existing framework altogether. Each is necessarily a separate subject that is not dependent upon the other. *In re 74*, 962 P.2d at 928-29.

In the final instance, Section 32(6) establishes a separate right of natural persons and governmental entities to bring an action at law or in equity, including equitable actions for injunctive and declaratory relief, as well as seek punitive damages in certain circumstances, to enforce the right to a healthy environment.

Subsection (4) re-prioritizes the rights found in the Bill of Rights. Adding a new right to the Bill of Rights, establishing new rights to bring legal action, and re-jiggering the priority of fundamental constitutional rights are not necessary or necessarily related to each other; and the latter two are certainly not necessary to establish the right to a healthy environment. *Id.*

B. The Title Impermissibly Contains Catch Phrase and is Vague and Misleading.

1. The Use of the Catch Phrase ““Healthy Environment” will Appeal to Voter Emotion without Contributing to Understanding of Initiative #63.

“It is well established that the use of catch phrases or slogans in the title, ballot title and submission clause, and summary should be carefully avoided by the Board.” *In re Title, Ballot Title, and Submission Clause “Amend Tabor” # 32, 908 P.2d 125, 130 (Colo. 1995).* The purpose of this rule is to prevent inclusion of particular words that will prejudice electors to vote for or against the proposed initiative merely by virtue of their appeal to emotion. *See In re Title, Ballot Title, and Submission Clause 1999–2000 #215, 3 P.3d 11, 14 (Colo. 2000).*

“Catch phrases” are words that work in a proposal’s favor without contributing to voter understanding. *In re Title, Ballot Title, and Submission Clause 1999–2000 #258, 4 P.3d 1094, 1100 (Colo. 2000).* Catch phrases must be avoided where they mask policy questions and subjects of great public debate as they generate support for a proposal not based on the content but merely on the

wording of the catch phrase. *Id.* (remanding the title due to the inclusion of the catch phrase “as rapidly and effectively as possible”).

The Title of Initiative #63 impermissibly contains the catch phrase “healthy environment” which is misleading and confusing to voters. While the Title claims to define the catch phrase “healthy environment,” the definition circularly incorporates the problematic term “healthy” by stating that a “healthy environment” encompasses “healthy air, water, land, and ecological systems.” “Healthy” is a term that is used regularly in our society in advertisements, social media, and news outlets. The generally positive association with the word “healthy” will certainly be appealing to many voters. However, because no true definition or metric exists for the phrase “healthy environment” either in the Title or the text of the Initiative, it is plainly an appeal to voters’ emotions. The phrase “healthy environment” under any understanding is highly subjective and does not lend itself to easy characterization (one elector’s conception of “healthy” when compared to his or her neighbor’s is likely to be different, perhaps significantly so). Because this term is subject to such vast numbers of different interpretations, and the Initiative contains no useful definition, it cannot be said to aid voters in understanding the purpose and effect of Initiative #63.

2. The Title is Vague and Misleading in Violation of the Colorado Constitution and Applicable Statutes.

Article V, section 1 (5.5) of the Colorado Constitution requires that the single subject of an initiative “be clearly expressed in its title.” The General Assembly also set forth a clear title standard in C.R.S. § 1-40-106(3)(b) which requires the Title Board to set a title which shall “correctly and fairly express the true intent” of the initiative and to “avoid titles for which the general understanding of the effect of a ‘yes’ or ‘no’ vote will be unclear.”

The aim of these standards is to create title and submission clauses which “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 #24*, 218 P.3d at 356; *see also In re Proposed Initiated Constitutional Amendment of Educ.*, 1984, 682 P.2d 480, 482 (Colo. 1984) (the title should “fairly and succinctly advise the voters what is being submitted, so that in the haste of an election the voter will not be misled into voting for or against a proposition by reason of the words employed.”). As the Court in *In re Title #45* explained,

The matter covered by [the initiative] is to be clearly, not dubiously or obscurely, indicated by the title. Its relation to the subject must not rest upon a merely possible or doubtful inference. The connection must be so obvious as that ingenious reasoning, aided by superior rhetoric, will not be necessary to reveal it. Such connection should be within the comprehension of the ordinary intellect, as well as the trained legal mind.

234 P.3d at 647-48.

An initiative that contains “a material and significant omission, misstatement, or misrepresentation” cannot stand. *In re Title, Ballot Title, and Submission Clause for 1999–2000 #29*, 972 P.2d 257, 268 (Colo. 1999) (finding that ambiguity regarding an essential feature of the measure violated clear title requirement). While the Court must refrain from rewriting the title or submission clause, it should determine whether the prohibition against unclear titles has been violated. *Id.* at 268.

The terms “highest priority” and “protective of a healthy environment” in Initiative #63 are so vague that they will mislead voters. Initiative #63 requires “state and local governments to assign the highest priority to protecting a healthy environment.” Voters are not apprised, however, of what that priority requirement means (Does a healthy environment requirement highest fiscal priority? Highest priority in terms of allocation of human capital? Highest priority for legislative action?). Similarly, the term “protective of a healthy environment” offers no standard for measurement and is thus equally vague and misleading (Does protection of a healthy environment equate to an absolute ban of activity that results in any negative environmental impact or are certain activities permissible?).

Additionally, the language describing a “healthy environment” as “*including* healthy air, water, land, and ecological systems” (emphasis added) is misleading to

voters. The word “including” indicates that what is presented is only a partial list of the matters encompassed in the definition. *See* BLACK’S LAW DICTIONARY (9th ed. 2009) (“including” means to contain as a part of something). Such a definition is unclear and leaves voters to surmise what other matters might conceivably be included in that list.

Due to the above-described fatal defects contained in the Title which will mislead and confuse voters, the Court should remand this matter to the Board with instructions to amend the Title.

VII. CONCLUSION

For the reasons set forth above, Petitioners respectfully request that the Court find Initiative 63 violates the single subject requirement and reverse this matter with instructions to return the initiative to the Proponents. Alternatively, Petitioners request that the Court, upon a finding that the Title is unclear and misleading, remand this matter to the Board with instructions to amend the Title.

Respectfully submitted this 2nd day of March, 2016.

RYLEY CARLOCK & APPLEWHITE

By: /s/ Richard C. Kaufman
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Sarah K. Pallotti

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Tracee Bentley and Stan Dempsey

CERTIFICATE OF SERVICE

I certify that on this 2nd day of March, 2016, a true and correct copy of the foregoing **PETITIONERS' OPENING BRIEF** was filed and served thru ICCES addressed to the following:

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S. WARD
1:58 P.M.

Colorado Secretary of State

Original

Initiative 2015-2016 #6 2016 4:13 PM

Be it Enacted by the People of the State of Colorado:

DATE FILED: February 11, 2016 9:22 AM

SECTION 1. In the constitution of the state of Colorado, add section (x) to article II as follows:

FILING ID: 7BA9847F1388F
CASE NUMBER: 2016SA51

Section (x). Right to a Healthy Environment

(1) THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT A HEALTHY ENVIRONMENT IS AN ESSENTIAL COMPONENT TO THE HEALTH, SAFETY AND WELFARE OF NATURAL PERSONS.

(2) Definitions

(a) FOR PURPOSES OF THIS SECTION, "A HEALTHY ENVIRONMENT" MEANS SAFE AND SUSTAINABLE CONDITIONS FOR LIFE, INCLUDING HEALTHY AIR, WATER, LAND, AND ECOLOGICAL SYSTEMS.

(b) FOR PURPOSES OF THIS SECTION, "LOCAL GOVERNMENT" MEANS ANY STATUTORY OR HOME RULE COUNTY, CITY AND COUNTY, CITY, OR TOWN LOCATED IN THE STATE OF COLORADO, NOTWITHSTANDING ANY PROVISION OF ARTICLE XX OF SECTION 16 OF ARTICLE XIV OF THE COLORADO CONSTITUTION.

(3) THE NATURAL PERSONS OF COLORADO, INCLUDING FUTURE GENERATIONS, HAVE AN INHERENT, INDEFEASIBLE, AND INALIENABLE RIGHT TO A HEALTHY ENVIRONMENT. PROTECTION OF THIS RIGHT IS HEREBY DEEMED TO BE A FUNDAMENTAL RIGHT OF NATURAL PERSONS OF COLORADO.

(4) STATE AND LOCAL GOVERNMENTS AND THEIR AGENCIES SHALL ASSIGN THE HIGHEST PRIORITY TO THE PROTECTION OF A HEALTHY ENVIRONMENT.

(5) ALL LOCAL GOVERNMENTS SHALL HAVE THE POWER TO ENACT LAWS, REGULATIONS, ORDINANCES AND CHARTER PROVISIONS THAT ARE PROTECTIVE OF A HEALTHY ENVIRONMENT. IF ANY STATE LAW OR REGULATION ADDRESSES THE SAME TOPIC AS ANY LOCAL LAW, REGULATION, ORDINANCE OR CHARTER PROVISION ENACTED OR ADOPTED PURSUANT TO THIS ARTICLE, THE LAW, REGULATION, ORDINANCE OR CHARTER PROVISION THAT IS MORE PROTECTIVE OF A HEALTHY ENVIRONMENT SHALL GOVERN.

(6) THE FUNDAMENTAL RIGHT TO A HEALTHY ENVIRONMENT MAY BE ENFORCED BY ANY AGGRIEVED PERSON OR GOVERNMENTAL ENTITY, IN AN ACTION AT LAW FOR DAMAGES OR IN AN ACTION IN EQUITY FOR INJUNCTIVE OR DECLARATORY RELIEF FOR ANY FAILURE TO ABIDE BY OR ENFORCE THE PROVISIONS OF THIS CONSTITUTIONAL RIGHT TO A HEALTHY ENVIRONMENT. IN ANY ACTION BY AN AGGRIEVED PERSON(S) OR LEGAL ENTITY FOR ENFORCEMENT OF THE FUNDAMENTAL RIGHT TO A HEALTHY ENVIRONMENT, PUNITIVE DAMAGES FOR RECKLESS DISREGARD RESULTING IN VIOLATIONS OF THE CONSTITUTIONAL PROVISIONS MAY BE AWARDED, AND A PREVAILING

AGGRIEVED PERSON(S) OR LEGAL ENTITY SHALL BE ENTITLED TO AND AWADED REASONABLE ATTORNEYS' FEES AND COSTS.

(7) ALL PROVISIONS OF THIS SECTION OF ARTICLE II OF THE COLORADO CONSTITUTION ARE SELF-EXECUTING AND SEVERABLE. THIS SECTION APPLIES TO THE STATE OF COLORADO AND TO EVERY COLORADO CITY, TOWN, COUNTY, CITY AND COUNTY, AND SPECIAL DISTRICT, NOTWITHSTANDING ANY PROVISION OF ARTICLE XX OR SECTION 16 OF ARTICLE XIV OF THE COLORADO CONSTITUTION.

DATE FILED: March 2, 2016 4:13 PM

Ballot Title Setting Board**Proposed Initiative 2015-2016 #63¹**DATE FILED: February 11, 2016 9:22 AM
FILING ID: 7BA9847F1388F
CASE NUMBER: 2016SA51

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

An amendment to the Colorado constitution concerning natural persons' fundamental right to a healthy environment and, in connection therewith, requiring state and local governments to assign the highest priority to protecting a healthy environment; allowing local governments to enact laws that are protective of a healthy environment; stating that such a local law governs over a state law that is less protective of a healthy environment; allowing natural persons and governmental entities to sue to enforce the fundamental right to a healthy environment; and awarding reasonable costs of litigation upon determination that a violation has occurred.

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 natural persons' fundamental right to a healthy environment and, in connection therewith, requiring state and local governments to assign the highest priority to protecting a healthy environment; allowing local governments to enact laws that are protective of a healthy environment; stating that such a local law governs over a state law that is less protective of a healthy environment; allowing natural persons and governmental entities to sue to enforce the fundamental right to a healthy environment; and awarding reasonable costs of litigation upon determination that a violation has occurred?

Hearing January 20, 2016:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 12:28 p.m.

¹ Unofficially captioned "**Right to Healthy Environment**" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

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JAN 27 2016

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S.WARD

DATE FILED: March 2, 2016 4:13 PM
Colorado Secretary of State

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE
2015-2016 #63DATE FILED: February 11, 2016 9:22 AM
FILING ID: 7BA9847F1388F
CASE NUMBER: 2016SA51

MOTION FOR REHEARING

Registered electors, Tracee Bentley and Stan Dempsey, through their legal counsel, Ryley Carlock & Applewhite, request a rehearing of the Title Board for Initiative 2015-2016 No. 63. As set forth below, Ms. Bentley and Mr. Dempsey 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 January 20, 2015, the Title Board designated the title as follows:

An amendment to the Colorado constitution concerning natural persons' fundamental right to a healthy environment and, in connection therewith, requiring state and local governments to assign the highest priority to protecting a healthy environment; allowing local governments to enact laws that are protective of a healthy environment; stating that such a local law governs over a state law that is less protective of a healthy environment; allowing natural persons and governmental entities to sue to enforce the fundamental right to a healthy environment; and awarding reasonable costs of litigation upon determination that a violation has occurred.

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

Shall there be an amendment to the Colorado constitution concerning natural persons' fundamental right to a healthy environment and, in connection therewith, requiring state and local governments to assign the highest priority to protecting a healthy environment; allowing local governments to enact laws that are protective of a healthy environment; stating that such a local law governs over a state law that is less protective of a healthy environment; allowing natural persons and governmental entities to sue to enforce the fundamental right to a healthy environment; and awarding reasonable costs of litigation upon determination that a violation has occurred?

GROUND FOR RECONSIDERATION

I. THE INITIATIVE IMPERMISSIBLY CONTAINS MULTIPLE SUBJECTS IN VIOLATION OF THE COLORADO CONSTITUTION AND STATUTES.

The Colorado Constitution and statutes require that each initiative that proposes an amendment to the Constitution shall contain only one subject and that subject shall be clearly expressed in the title. *See* Colo. Const. art. V., § 1(5.5); C.R.S. § 1-40-106.5; *In re Title, Ballot Title*,

Submission Clause, 974 P.2d 458, 463 (Colo. 1999) (a proposed initiative violates the single subject rule where it “has at least two distinct and separate purposes which are not dependent upon or connected with each other”). The Board set title for Initiative No. 63 despite the fact that it contains multiple distinct and separate purposes that are not dependent upon or connected with one another. Specifically, the initiative includes the following several, unrelated subjects:

- (1) Section 32(2)(a) provides a definition of healthy environment “including healthy air, water, land, and ecological systems.” The term “including” means that some but not all of the items covered are set forth. The title does not reflect that additional unstated subjects are part of this definition.
- (2) Section 32(a)(3) rearranges the legal status of local governments in relation to Article XX and section 16 of Article XIV of the Colorado Constitution. This is a separate subject which is not reflected in the title.
- (3) Section 32(3) establishes a new “inherent, indefeasible, and inalienable right to a healthy environment and, in the same subsection, characterizes it as a “fundamental right of natural persons,” and subsection (4) requires state and local governments to protect the right with ‘the highest priority’ thereby establishing a priority ranking of fundamental rights natural persons have under the Colorado constitution and statutes. Protecting the environment, however defined, and creating a hierarchy of fundamental rights in natural persons are two independent separate subjects.
- (4) Section 32(5) establishes a new preemption regime in two ways. That section allows local government charter provisions and ordinances to preempt state statutes, in large measure reversing the present preemption law; and second, it creates a new form of preemption based on the breadth of a particular ordinance or charter provision compared to a state statute. No longer is preemption based on express, implied or operational conflict; but rather on which statute, ordinance, or charter provision is more restrictive. *See Bd. Of Cnty. Comm’rs v. Bowen/Edwards Assocs., Inc.*, 830 P.2d 1045, 1048-49 (Colo. 1992).
- (5) Section 32(6) establishes a separate right in both persons and governmental entities to bring an action at law or in equity for injunctive or declaratory relief. Requiring state and local governments to prioritize the protection of the environment and authorizing a new action at law or in equity for persons and governmental entities are two separate and independent subjects.

These subjects are not connected or interdependent and therefore the Title Board lacks jurisdiction to set a title.

II. THE INITIATIVE'S PROVISIONS ARE SO VAGUE AND MISLEADING THE BOARD CANNOT SET A TITLE THAT ENCOMPASSES AND REFLECTS THE PURPOSE OF THE PROPOSAL.

Colorado Revised Statute §1-40-106(3)(b) and (c) requires the ballot title to accurately reflect the subject matter of an initiative to avoid confusion over its true intent, purpose and meaning. *Aisenberg v. Campbell*, 987 P.2d 249, 253 (2000). The Title set for Initiative No. 63 violates this statutory provision in the following ways:

- (1) Section 32(2)(a) is vague and misleading because the items after the word term "including" are only a partial list of the subjects, some stated and others unstated, this section contemplates. The Title Board failed to mention that provision when setting the title. Therefore, the electorate will be unaware the initiative covers unstated subjects.
- (2) Section 32(3) utilizes the term "fundamental right" which is also repeated in the ballot title. This term is catch phrase that creates a prejudice in favor of the initiative.
- (3) Section 32(4) prioritizes the right to a healthy environment in a manner that is vague and misleading with regard to other individual constitutional rights.
- (4) Section 32(6) states that an "aggrieved natural person or governmental entity" may bring an action to enforce the amendment. The title does not reflect the person or entity suing must be aggrieved. Therefore the title is vague and fails to communicate that requirement.
- (5) The title not only fails to reflect that section 32(6) provides for "punitive damages for reckless disregard" of this constitutional amendment, but also neither the initiative nor the title reflect what constitutes circumstances of "reckless disregard." Therefore the title is vague and misleading.

Based on the foregoing, Ms. Bentley and Mr. Dempsey respectfully request the Title Board conduct a re-hearing on the title set for Initiative 2015-2016 #63.

Respectfully submitted this 27th day of January, 2016 by:

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DATE FILED: March 2, 2016 4:13 PM

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BEFORE THE TITLE BOARD, STATE OF COLORADO

Colorado Secretary of State
 DATE FILED: February 11, 2016 9:22 AM
 FILING ID: 7BA9847F1388F
 CASE NUMBER: 2016SA51

MOTION FOR REHEARING

IN RE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE SET FOR INITIATIVE
 2015-16 #63

Petitioner, Douglas Kemper, a registered elector of the State of Colorado, by and through his counsel, Burns, Figa & Will, P.C., hereby requests a rehearing and reconsideration of the title and ballot title and submission clause (collectively the "Title") set by the Title Board ("Board") on January 20, 2016, for Initiative 2015-16 #63 (the "Initiative"), which would amend the Colorado Constitution. Reconsideration is requested for the following reasons:

1. The Initiative and Title violate the single-subject requirements of Article V, Section 1(5.5) of the Colorado Constitution, and C.R.S. § 1-40-106.5;
2. The Title does not correctly and fairly express the true intent and meaning of the Initiative because it omits two central features of the initiative, in violation of C.R.S. § 1-40-106(3)(b).

1. **THE INITIATIVE AND TITLE VIOLATE THE SINGLE SUBJECT REQUIREMENT.**

The Initiative violates the single subject requirements of Article V, Section 1(5.5) of the Colorado Constitution, and C.R.S. § 1-40-106.5, because it contains two separate, distinct, and unrelated subjects: (a) creation of a new fundamental right to a healthy environment for all natural persons in Colorado; and (b) overturning preemption doctrines by imposing local control over environmental regulations with the authority to supersede any less restrictive state environmental regulations.

Section (5) of the Initiative provides that local governments have the power to enact laws, regulations, ordinances, and charter provisions that are more protective of a healthy environment than those that are enacted or adopted by the state government. Further, Section (5) provides that any local law or regulation adopted pursuant to this power shall govern over any conflicting state law or regulation whenever the local law or regulation is more protective. This "local preemption" theme is itself the primary subject of several other current and recent proposed initiatives that do not include any creation of environmental rights. *See, e.g.*, Initiatives 2015-16 #40, 64 and 75 (noting that Initiatives 64 and 75 were introduced by the same designated representatives as Initiative 63); 2013-14 Initiatives #75, 82 and 90-92. The stand-alone treatment of local preemption in these other proposed initiatives demonstrates that Section (5) is a separate, distinct and unrelated subject, coiled in the folds of a measure creating a fundamental right to a healthy environment, but lacking any necessary or proper connection to that subject.

2. **THE TITLE DOES NOT CORRECTLY AND FAIRLY EXPRESS THE TRUE INTENT AND MEANING OF THE INITIATIVE BECAUSE IT OMITTS TWO KEY FEATURES OF THE INITIATIVE.**

The Title omits any mention of two central features of Initiative 63: (a) the definition of a healthy environment, and (b) the provision for awarding punitive damages. Because these key features are omitted, the Title does not correctly and fairly express the true intent and meaning of the Initiative, in violation of C.R.S. § 1-40-106(3)(b).

A. The Title Must Correctly and Fairly Express the True Intent and Meaning of the Initiative.

An initiative's ballot title and submission clause must "correctly and fairly express the true intent and meaning" of the initiative. C.R.S. § 1-40-106(3)(b). To be correct and fair, the title must include the central features of the initiative. See *Matter of Title, Ballot Title & Submission Clause for 2013-2014 #90*, 328 P.3d 155, 162 (Colo. 2014); *Garcia v. Chavez*, 4 P.3d 1094, 1098 (Colo. 2000). It is critical that titles contain the central features of an initiative so that voters, "whether familiar or unfamiliar with the subject matter of a particular proposal, [can] determine intelligently whether to support or oppose" it. *Matter of Title, Ballot Title & Submission Clause for 2013-2014 #90*, 328 P.3d at 162.

The Board is charged with ensuring that the title is fair, clear, and accurate, and does not mislead the voters. See *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 258(A)*, 4 P.3d 1094, 1099 (Colo. 2000). Accordingly, in setting the titles, the Board must specifically "consider the public confusion that might be caused by misleading titles." *Id.* at 1098 (internal quotation marks omitted). The Board may not set titles that contain a "material and significant omission, misstatement, or misrepresentation." *Matter of Title, Ballot Title & Submission Clause, & Summary for 1997-98 No. 62*, 961 P.2d 1077, 1082 (Colo. 1998). Omitting a "key feature" of the initiative from a title is a "fatal defect" if that omission may cause confusion and mislead voters about what the initiative actually proposes. *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 258(A)*, 4 P.3d at 1099.

B. The Distinct Definition of "Healthy Environment" is a Central Feature of the Initiative.

Initiative 63 includes a distinct definition of the phrase "healthy environment." Section (2) defines a "healthy environment" as "safe and sustainable conditions for human life, including healthy air, water, land, and ecological systems."

However, the Title for the Initiative omits this definition of "healthy environment." Instead, this defined phrase is repeated five times in the Board's Title without any indication of what the phrase means.

For an informed vote on the measure, voters will need to understand this definition because it is new, could be controversial, and will be a significant legal standard. *See Matter of Proposed Initiative On Parental Notification of Abortions For Minors*, 794 P.2d 238, 241 (Colo. 1990). This definition of "healthy environment" does not appear to follow any common dictionary definition of "healthy" or "environment." Nor is this definition, which includes the distinct concepts of both "safe" and "sustainable," a common and prevalent meaning for the phrase "healthy environment." Thus, voters will not be able to know the true intent and meaning of "healthy environment" as used in the Initiative without being made aware of this definition. *See id.*

This definition is a central feature of this Initiative, and is material to understanding most of the other provisions. Other sections in the Initiative, including the new fundamental right to this healthy environment, government protection priorities, and what violations can be the basis of a lawsuit, will turn on this definition. For example, Section (4) will require governments to assign the highest priority to protecting a healthy environment. In context, this would specifically mean protecting and prioritizing a "safe and sustainable" environment ahead of other concerns that could be related to the environment or health in other ways.

C. Punitive Damages is a Material Feature of the Initiative.

Section (6) of the Initiative authorizes lawsuits to enforce the fundamental right to a healthy environment, providing that prevailing parties may recover reasonable attorney fees and costs. Prevailing parties may also be awarded punitive damages, on a finding of reckless disregard.

While the Board's Title recognizes the Section (6) enforcement provision as a central feature, the Title omits mention of punitive damages. The Title mentions only reasonable costs of litigation.

Allowing punitive damages in addition to reasonable costs is a central and material feature of the Initiative. A potential award of punitive damages is separate from the reasonable costs of litigation, and is in addition to any award for such costs. The Colorado Supreme Court recognized that punitive damages are a "distinct form of damages." *Seaward Const. Co. v. Bradley*, 817 P.2d 971, 973 (Colo. 1991). Unlike other types of damage awards, punitive damages "punish the wrongdoer and deter similar acts." *Id.* at 975. They are not intended to be a reimbursement for reasonable attorney fees and costs, or compensation to cover the cost of a loss. *See id.* Additionally, punitive damages are available in Colorado only pursuant to a statute, or in this case, a constitutional amendment. *See id.* at 973. Thus, voters will not be able to know the true intent and meaning of Section (6) without knowing that punitive damages may be awarded.

D. The Title Omits these Central and Material Features of the Initiative.

The Title does not mention either the Section (2) definition of healthy environment or the Section (6) punitive damages provision. The Initiative's Title was set as follows:

An amendment to the Colorado constitution concerning natural persons' fundamental right to a healthy environment and, in connection therewith, requiring state and local governments to assign the highest priority to protecting a healthy environment; allowing local governments to enact laws that are protective of a healthy environment; stating that such a local law governs over a state law that is less protective of a healthy environment; allowing natural persons and governmental entities to sue to enforce the fundamental right to a healthy environment; and awarding reasonable costs of litigation upon determination that a violation has occurred.

Voters will not be able to vote intelligently based on this Title because it omits these two central features of the Initiative. From the Title, as now set, voters will have no way to anticipate what the definition of "healthy environment" includes, or does not include, or how this definition affects other provisions in the Initiative. Voters will also be unaware that defendants may face, or that prevailing parties may be entitled to, punitive damages, in addition to reasonable attorney fees and costs. *See In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 258(A)*, 4 P.3d at 1099. Omitting these two central and material features will cause confusion and mislead voters, and is thus a fatal defect that must be corrected in an amended title.

By adding the short definition of a healthy environment, and the fact that punitive damages may be awarded, the Title will enable voters to determine intelligently whether to support or oppose the Initiative. *See Matter of Title, Ballot Title & Submission Clause for 2013-2014 #90*, 328 P.3d at 162. Adding these features will not make the title and submission clause overly lengthy or complicated. *See In re Title, Ballot Title & Submission Clause, & Summary for 1999-00 #£256*, 12 P.3d 246, 256 (Colo. 2000).

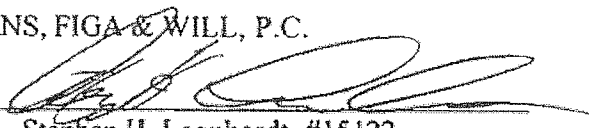
For these reasons, the title and ballot title and submission clause do not conform to the statutory requirements of § 1-40-106(3)(b), or to the requirements set by case law construing the statute.

WHEREFORE, Petitioner Douglas Kemper respectfully requests a rehearing and reconsideration of the title and ballot title and submission clause set by the Title Board on January 20, 2016, for Initiative 2015-16 #63.

Respectfully submitted this 26th day of January 2016.

BURNS, FIGA & WILL, P.C.

By:


Stephen H. Leonhardt, #15122

Morgan L. Figuers, #46427

6400 S. Fiddlers Green Circle, Suite 1000

Greenwood Village, CO 80111

Attorneys for Petitioner

Douglas Kemper

CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing **MOTION FOR REHEARING** was served via U.S. mail on this 26th day of January 2016, as follows:

Martha Tierney, Esq.
Tierney Paul Lawrence
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Michelle G. Trujillo

DATE FILED: March 2, 2016 4:13 PM

Ballot Title Setting Board**Proposed Initiative 2015-2016 #63¹**DATE FILED: February 11, 2016 9:22 AM
FILING ID: 7BA9847F1388F
CASE NUMBER: 2016SA51

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

An amendment to the Colorado constitution concerning natural persons' fundamental right to a healthy environment and, in connection therewith, defining "healthy environment" as safe and sustainable conditions for human life, including healthy air, water, land, and ecological systems; requiring state and local governments to assign the highest priority to protecting a healthy environment; allowing local governments to enact laws that are protective of a healthy environment; stating that such a local law governs over a state law that is less protective of a healthy environment; allowing natural persons and governmental entities to sue to enforce the fundamental right to a healthy environment; and awarding reasonable costs of litigation upon determination that a violation has occurred.

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 natural persons' fundamental right to a healthy environment and, in connection therewith, defining "healthy environment" as safe and sustainable conditions for human life, including healthy air, water, land, and ecological systems; requiring state and local governments to assign the highest priority to protecting a healthy environment; allowing local governments to enact laws that are protective of a healthy environment; stating that such a local law governs over a state law that is less protective of a healthy environment; allowing natural persons and governmental entities to sue to enforce the fundamental right to a healthy environment; and awarding reasonable costs of litigation upon determination that a violation has occurred?

Hearing January 20, 2016:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 12:28 p.m.

Rehearing February 3, 2016:

Motion for Rehearing granted only to the extent that the Board made changes to the titles; denied in all other respects.

Hearing adjourned 11:23 a.m.

¹ Unofficially captioned "**Right to Healthy Environment**" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

SUPREME COURT OF COLORADO 2 East 14 th Avenue Denver, CO 80203	DATE FILED: March 2, 2016 4:13 PM
Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board	DATE FILED: February 11, 2016 9:22 AM FILING ID: 7BA9847F1388F CASE NUMBER: 2016SA51
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2015-2016 #63 ("Right to a Healthy Environment") Petitioners: TRACEE BENTLEY AND STAN DEMPSEY v. Respondents: BRUCE MASON AND KAREN DIKE and Title Board: SUZANNE STAIERT; JASON GELENDER; AND FREDERICK R. YARGER	▲ COURT USE ONLY ▲
Attorneys for Petitioner: Richard C. Kaufman, No. 8343 Matthew K. Tieslau, No. 47483 RYLEY CARLOCK & APPLEWHITE 1700 Lincoln Street, Suite 3500 Denver, Colorado 80203 Telephone: (303) 863-7500 Facsimile: (303) 595-3159	Case Number: 16SA_____
PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2015-2016 #63 ("RIGHT TO A HEALTHY ENVIRONMENT")	

Tracee Bentley and Howard Stanley Dempsey (“Petitioners”), registered electors of the State of Colorado, through their undersigned counsel, respectfully petition this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set forth in Initiative 2015-2016 #63 (“Right to a Healthy Environment”) (hereinafter “Proposed Initiative”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative #63

Bruce Mason and Karen Dike (“Proponents”) are the designated proponents of the Proposed Initiative. Proponents submitted a final version of the Proposed Initiative to the Secretary of State on January 8, 2016 for purposes of having the Title Board set title. The Secretary of State or his designee is a member of the Title Board. The review and comment hearing required by C.R.S. § 1-40-105(1) was conducted by the Offices of Legislative Council and Legislative Legal services on January 20, 2016.

The Title Board considered and set title for the Proposed Initiative at its January 20, 2016 meeting. On January 27, 2016 Petitioners timely filed a Motion for Rehearing pursuant to C.R.S. § 1-40-107(1)(a), alleging that the Proposed Initiative violated the single subject requirement contained within the Colo. Const. art. V., § 1(5.5) and C.R.S. § 1-40-106.5, and that the Proposed Initiative’s title did not accurately reflect the subject matter of the initiative as required by the Colorado Revised Statutes Section 1-40-106(3)(b) and (c) which rendered the title misleading. On January 26, 2015 a separate Petitioner, Douglas Kemper, filed a separate Motion for Rehearing pursuant to C.R.S. § 1-40-107(1)(a) alleging similar concerns. The Title Board considered both Petitioners’ Motions at its February 3, 2016 meeting. The Motions for

Rehearing were granted to the extent that the Board made limited changes to the title and submission clause but were denied in all other respects.

B. Jurisdiction

Petitioners submit this matter to the Colorado Supreme Court for review pursuant to C.R.S. § 1-40-107(2). Petitioners timely filed the Motion for Rehearing with the Title Board pursuant to C.R.S. § 1-40-107(1) and timely filed this Petition for Review within seven days from the date of rehearing as required by C.R.S. § 1-40-107(2).

Consistent with the requirement set forth in section 1-40-107(2), Petitioners have attached the following documents certified by the Secretary of State: (1) the original version of the Proposed Initiative filed by the Proponents; (2) the original and amended ballot title set for this measure; (3) both Petitioners' Motions for Rehearing; and (4) the Title Board's ruling on the Motion for Rehearing. Petitioners respectfully submit that the Title Board erred in denying the Motion for Rehearing and therefore this matter is properly before this Court.

GROUND FOR APPEAL

The following is an advisory list of issues and grounds for appeal which will be discussed in full detail in Petitioner's brief:

A. The Initiative Impermissibly Contains Multiple Subjects in Violation of the Colorado Constitution and Statutes

The Title Board violated Colo. Const. art. V., § 1(5.5) and C.R.S. § 1-40-106.5 when it set title for the Proposed Initiative. These sections require that every constitutional amendment proposed by initiative be limited to a single subject which shall be clearly expressed in its title. The Proposed Initiative includes the following unrelated subjects:

- (1) Section 32(a)(3) rearranges the legal status of local governments in relation to Article XX and section 16 of Article XIV of the Colorado Constitution. This is a separate subject.

- (2) Section 32(3) establishes a new “inherent, indefeasible, and inalienable right to a healthy environment” and, in the same subsection, characterizes it as a “fundamental right of natural persons,” and subsection (4) requires state and local governments to protect the right with “the highest priority” thereby establishing a priority ranking of fundamental rights natural persons have under the Colorado constitution and statutes. Protecting the environment, however defined, and creating a hierarchy of fundamental rights in natural persons are two independent separate subjects.
- (3) Section 32(5) establishes a new preemption regime in two ways. That section allows local government charter provisions and ordinances to preempt state statutes, in large measure reversing the present preemption law; and second, it creates a new form of preemption based on the breadth of a particular ordinance or charter provision compared to a state statute. No longer is preemption based on express, implied, or operational conflict; but rather on which statute, ordinance, or charter provision is more restrictive.
- (4) Section 32(6) establishes a separate right in both persons and governmental entities to bring an action at law or in equity for injunctive or declaratory relief. Requiring state and local governments to prioritize the protection of the environment and authorizing a new action at law or in equity for persons and governmental entities are two separate and independent subjects.

These subjects are not connected or interdependent and therefore the Board lacked jurisdiction to set title.

B. The Initiative’s Provisions are so Vague that the Title does not Encompass and Reflect the Purpose of the Proposal

The Title Board violated Section 1(5.5) of article V of the Colorado Constitution when it set title for the Proposed Initiative. This section requires that the ballot title set by the Board clearly

and correctly express the subject of the Initiative in order to avoid confusion and setting a misleading title and submission clause. The Proposed Initiative title fails to accurately reflect the subject matter such that it is materially misleading in the following ways:

- (1) Section 32(3) utilizes the term “fundamental right” which is also repeated in the ballot title. This term is catch phrase that creates a prejudice in favor of the initiative.
- (2) Section 32(4) prioritizes the right to a healthy environment in a manner that is vague and misleading with regard to other individual constitutional rights.
- (3) Section 32(6) states that an “aggrieved natural person or governmental entity” may bring an action to enforce the amendment. The title does not reflect the person or entity suing must be aggrieved. Therefore the title is vague and fails to communicate that requirement.
- (4) The title not only fails to reflect that section 32(6) provides for “punitive damages for reckless disregard” of this constitutional amendment, but also neither the initiative nor the title reflect what constitutes circumstances of “reckless disregard.” Therefore the title is vague and misleading.

All of the above issues demonstrate that the ballot title set by the Board is vague, confusing, and misleading and as such the Proposed Initiative should be void to the extent it is misleading.

PRAYER FOR RELIEF

Petitioners respectfully request that after consideration of the parties’ briefs, this Court determine that the Title Board lacked jurisdiction to set title as the Proposed Initiative contains multiple discrete subjects, and therefore title setting must be denied. Alternatively, Petitioners request that the Court determine that the title as set is confusing, misleading, and not clearly reflective of the subject of the Proposed Initiative and thus remand the Initiative to the Title

Board with instructions to redraft to the title to accurately and clearly represent the text of the Proposed Initiative.

Respectfully submitted this 10th day of February 2016 by:

RYLEY CARLOCK & APPLEWHITE

By: s/ Richard C. Kaufman

Richard C. Kaufman, No. 8343

Matthew K. Tieslau, No. 47483

RYLEY CARLOCK & APPLEWHITE

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Facsimile: (303) 595-3159

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I certify that on the 10th day of February, 2016, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2015-2016 #63 (“RIGHT TO A HEALTHY ENVIRONMENT”)** was electronically filed with the court via ICCES and served via U.S mail, postage prepaid, addressed to the following:

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