SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, CO 80203 Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2015-2016 #78 ("Mandatory Setback for Oil and Gas Development") **Petitioners: SHAWN MARTINI and SCOTT PRESTIDGE** **v.** **Respondents: BRUCE MASON and KAREN DIKE** **and** **Title Board: SUZANNE STAIERT; FREDERICK YARGER; and JASON GELENDER**	DATE FILED: March 16, 2016 3:22 PM ▲COURT USE ONLY▲
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PETITIONERS' OPENING BRIEF IN SUPPORT OF PETITION FOR REVIEW OF PROPOSED INITIATIVE 2015-2016 #78 ("MANDATORY SETBACK FOR OIL AND GAS DEVELOPMENT")

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

☒It contains 6,200 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

☒**For each issue raised by the appellant**, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

☐**In response to each issue raised, the appellee** must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant'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 or 28.1, and C.A.R. 32.

s/*Elizabeth H. Titus*

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2. Whether the Title Board erred in setting titles that are confusing, misleading, and fail to reflect the intent of the measure.

STATEMENT OF THE CASE

I. Nature of the Measure

If adopted, proposed initiative 2015-2016 #78 (the "Proposed Initiative" or "Initiative" or "Initiative #78"), would establish in the Colorado Constitution a minimum, mandatory, non-waivable 2,500-foot setback for "all new oil and gas development facilities" from all occupied structures, public and community drinking water sources, lakes, rivers, perennial or intermittent streams, creeks, irrigation canals, riparian areas, playgrounds, permanent sports fields, amphitheaters, public parks, public open space and other locally designated areas. Initiative, attached hereto as Exhibit A, §§ 2(4), 3; Ballot Title Setting Board, Final Title for Proposed Initiative 2015-2016 #78, (February 17, 2016), attached hereto as Exhibit B (hereinafter "Final Title"). "Oil and gas development facility" is defined to include "the site of oil and gas wells, pits and wells for the disposal of

associated waste products, including underground injections wells, and associated production and processing facilities." Initiative § 2(2). The measure also grants state and local governments constitutional authority to impose setbacks greater than 2,500 feet from occupied structures. *Id.* § 4.

II. Nature of the Case, Course of Proceedings, and Disposition Below

Karen Dike and Bruce Mason (collectively "Proponents") are the designated representatives of the Proposed Initiative. Proponents submitted the Proposed Initiative to the Offices of Legislative Council and Legislative Legal Services on January 8, 2016. *See* Letter, attached hereto as Exhibit C. Pursuant to C.R.S. § 1-40-105(2), the Offices of Legislative Council and Legislative Legal Services waived the review and comment hearing required by C.R.S. § 1-40-105(1) on January 11, 2016. *See id*. Proponents thereafter submitted a final version of the Proposed Initiative to the Secretary of State on January 21, 2016 for the Title Board (the "Board") to set title. *See* Initiative.

The Board considered and set title for the Proposed Initiative at its February 3, 2016 meeting. On February 10, 2016, Petitioners timely filed a Motion for Rehearing pursuant to C.R.S. § 1-40-107(1)(a), explaining that the Board lacked jurisdiction to set title because the Proposed Initiative violated the single-subject requirement. *See* Petitioners' Motion for Rehearing, attached hereto as Exhibit D. In the alternative, Petitioners argued that the title was misleading because it failed

to describe important aspects of the measure. *See id.* The Title Board considered Petitioners' motion at its February 17, 2016 meeting, and denied the motion, except to the extent that the Board revised the title. *See* Final Title.

The Final Title for Initiative #78 states:

> An amendment to the Colorado constitution concerning a statewide setback requirement for new oil and gas development facilities, and, in connection therewith, changing setback requirements to require any new oil and gas development facility in the state to be located at least 2,500 feet from the nearest occupied structure or other specified or locally designated area and authorizing the state or a local government to require new oil and gas development facilities to be located more than 2,500 feet from the nearest occupied structure.

Id.

Because the Initiative violates the single-subject requirement and the Final Title is misleading, Petitioners timely submitted this matter to the Colorado Supreme Court for review, pursuant to C.R.S. § 1-40-107(2). *See* Petition for Review, filed February 24, 2016.

SUMMARY OF THE ARGUMENT

Under the guise of establishing a "statewide setback requirement for new oil and gas development facilities" (*see* Final Title), the Proposed Initiative contains multiple, unrelated subjects, which include:

1. Imposing a new 2,500-foot setback for new oil and gas development facilities from occupied structures (Initiative § 3),

2. Authorizing governments, including local governments, to increase the setback requirement from occupied structures (Initiative §4), and

3. Creating a setback for new oil and gas development facilities from "area[s] of special concern." (Initiative §§ 2(4), 3).

To the extent the Court finds that the Initiative includes only one subject, the Final Title is nevertheless confusing, misleading, and not reflective of the Proponents' intent and, therefore, must not be forwarded to the voters. First, the term "statewide setback" as used in the Final Title is misleading because it incorrectly suggests that the Initiative will provide a uniform setback requirement for new oil and gas development facilities throughout the state. Second, the Final Title does not provide notice of the types of property and hydrological features included within the definition of "area of special concern." Third, the Final Title fails to inform voters that the Initiative includes a declaration by the "people of the state of Colorado" that "oil and gas development, including the use of hydraulic fracturing, has detrimental impacts on public health, safety, welfare, and the environment." *See* Initiative § 1(a).

Based on the foregoing, the Court should remand this matter to the Board with directions to strike the Final Title and to return the Initiative to the Proponents. In the alternative, the Court should remand this matter to the Board

with directions to amend the Final Title consistent with the concerns expressed herein.

ARGUMENT

I. UNDER THE GUISE OF ESTABLISHING A "STATEWIDE SETBACK REQUIREMENT FOR NEW OIL AND GAS DEVELOPMENT FACILITIES" THE INITIATIVE CONTAINS MULTIPLE AND DISTINCT SUBJECTS.

As reflected in the Final Title, the purported single subject of the Initiative is: "An amendment to the Colorado constitution concerning a statewide setback requirement for new oil and gas development facilities." *See* Final Title (emphasis added). The Board's use of the term "statewide setback" in the subject clause of the Final Title implies that the measure would establish a uniform setback for new oil and gas facilities throughout the state. However, if the Proposed Initiative passes, it will authorize state and local governments to enact incongruous setbacks, varying in length, and applicable to numerous property classifications. *See infra* § II.B. Thus, the term "statewide setback" inaccurately reflects the purported primary purpose of the Initiative. Further, the term impermissibly attempts to join separate and distinct purposes of the measure that cannot be expressed in a single subject. Therefore, the Court should reverse the Board's determination that the Initiative contains a single subject and remand this matter to the Board with directions to strike the title, ballot title and submission clause of the Initiative.

A. Standard of Review and Preservation

The Colorado Constitution requires that a citizen-initiated measure contain only a single subject, which shall be clearly expressed in its title. Colo. Const. art. V., § 1(5.5); *see also* C.R.S. § 1-40-106.5. The single-subject requirement prevents proponents from combining multiple subjects to attract a "yes" vote from voters who might otherwise vote "no" on one or more of the subjects if proposed separately. *Matter of Title, Ballot Title, & Submission Clause for 2013-2014 #76,* 333 P.3d 76, 79 (Colo. 2014) (citing *In re Proposed Initiative for 1997-1998 #84*, 961 P.2d 456, 458 (Colo. 1998). Accordingly, an initiative's subject matter "must be necessarily and properly connected rather than disconnected or incongruous." *Id.* (citing *In re Proposed Initiative for 2011–2012 # 45*, 274 P.3d 576, 579 (Colo. 2012)).

When reviewing a challenge to the Title Board's single-subject determination, the Court assumes legitimate presumptions in favor of the propriety of the Board's actions. *In re Title, Ballot Title, Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 645 (Colo. 2010) (internal citation omitted). The Court does not consider the initiative's efficacy, construction, or future application. *Id.* When necessary, however, the Court "will characterize the proposal sufficiently to enable review of the Title Board's action." *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 258(A)*, 4 P.3d 1094, 1098 (Colo. 2000).

When construing an initiative, the Court applies the general rules of statutory construction. *In re Title, Ballot Title & Submission Clause, for 2007-2008, #17*, 172 P.3d 871, 873 (Colo. 2007).

Petitioners properly raised and preserved their challenge to Initiative #78's violation of the single-subject rule in their Motion for Rehearing. Motion for Rehearing at 1-2. At the rehearing on February 17, 2016, the Board considered and denied the Petitioners' motion on this issue. *See* Final Title.

B. The Term "Statewide Setback" is an Umbrella Proposal that Inaccurately and Impermissibly Attempts to Unite Separate Subjects.

Titles containing general "umbrella proposals" to unite separate subjects are unconstitutional. *Matter of 2013-2014* #76, 333 P.3d at 79. The Board has a duty to set titles in a manner that protects voters from confusion resulting from misleading titles. *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 25*, 974 P.2d 458, 465 (Colo. 1999). If the Board cannot accurately determine and state the single subject of a measure in its title, the initiative may not be forwarded to the voters. *Id.* As set forth below, the Board impermissibly used the term "statewide setback" to join separate and distinct subjects under one title.

1. <u>One Purpose of the Initiative Is to Provide a 2,500-Foot Setback from Occupied Structures.</u>

The Initiative requires an increased setback of 2,500 feet for all new "oil and gas development facilities" from all occupied structures. *See* Initiative § 3 ("all new oil and gas development facilities … must be located at least two thousand five hundred feet from an occupied structure"). This setback significantly changes existing law, which requires oil and gas "Wells"[1] and "Production Facilities"[2] to be located at least 500 feet from most buildings (including residential buildings) and 1,000 feet from "High Occupancy Buildings" (including schools, hospitals and other facilities serving more than 50 persons). 2 Colo. Code Regs. §§ 404-1:604.a ("Setbacks"), 404-1:100 (defining "Building Unit" and "High Occupancy Buildings"). Further, existing regulation allows for modification and waiver of the setback requirements. *Id.* 404-1:604.b. For example, a landowner and an oil and gas operator may enter into an agreement that waives the minimum setback requirement. *See Id.* § 404-1:604.b(2). In contrast, if approved, the Proposed Initiative promulgates non-waivable setbacks that could not be reduced without

[1] COGCC regulations define "Well" as "an oil or gas well, a hole drilled for the purpose of producing oil or gas, a well into which fluids are injected, a stratigraphic well, a gas storage well, or a well used for the purpose of monitoring or observing a reservoir." 2. Colo. Code Regs. § 404-1:100.

[2] COGCC regulations define "Production Facility" as "any storage, separation, treating, dehydration, artificial lift, power supply, compression, pumping, metering, monitoring, flowline, and other equipment directly associated with oil wells, gas wells, or injection wells." 2. Colo. Code Regs. § 404-1:100.

further amendment to the Colorado Constitution. *See* Initiative § 3. Landowners would, thus, lose their ability to contractually waive setback requirements and would be deprived of the economic benefits of mineral development of their own land.

2. Authorizing Governments, Including Local Governments, to Increase the Setback Requirement is a Separate and Distinct Purpose.

The Proposed Initiative also grants state and local governments the authority to "require that new oil and gas development facilities be located a larger distance away from occupied structures than [2,500 feet]." Initiative § 4. Moreover, the Initiative does not limit the length of the "larger distance" or otherwise qualify the state's or a local government's authority to impose setbacks greater than 2,500 feet. *See* Initiative. For example, the Initiative does not require the government to act "reasonably" when imposing a setback greater than 2,500 feet. *See id.* More importantly, the Initiative does not preclude a government from enacting setbacks that will entirely eliminate oil and gas operations in a particular jurisdiction. *See id.* If approved, Initiative #78 would authorize state and local governments to impose setback distances great enough to ban new oil and gas operations in a particular jurisdiction. *See id.* This grant of governmental authority is a separate subject, distinct from establishing a 2,500-foot setback from occupied structures.

The existence of a separate subject is particularly evident when considering the Initiative's effect on the authority of local governments to regulate oil and gas activities. Local governments do not have authority to regulate well location – that power belongs exclusively to the state. *Bd. of Cty. Comm'rs, La Plata City. v. Bowen/Edwards Assocs., Inc.*, 830 P.2d 1045, 1058 (Colo. 1992) (The authority to regulate "drilling, pumping, plugging, waste prevention, safety precautions, and environmental restoration," well location and well-spacing, among other activities, resides with state) (emphasis added)). Moreover, local governments may not ban the drilling of oil and gas wells. *Voss v. Lundvall Bros.*, 830 P.2d 1061, 1068 (Colo. 1992). The Initiative, thus, impermissibly combines a proposal voters might favor: a setback of 2,500 feet for new oil and gas development facilities from occupied structures; with a proposal voters might oppose: providing local governments the authority to regulate well location and increase the 2,500 foot setback **without limitation**. *See Matter of Title for 2013-2014 #76*, 333 P.3d at 79; *see also In re Title & Ballot Title & Submission Clause for 2005-2006 #55*, 138 P.3d 273, 282 (Colo. 2006) (holding that the initiative concealed items within its proposal as prohibited by the single subject rule). Accordingly, the combination of creating a 2500-foot setback from occupied structures along with a grant of

authority for a local government to increase that setback violates the single-subject rule.

3. Creating a Setback for the Various Properties and Hydrologic Features Included within the Defined Term "Area of Special Concern" Violates the Single-Subject Rule.

In addition to the two subjects identified above, the Initiative creates new setbacks from "area[s] of special concern," a term defined to include 13 different types hydrologic features and unrelated properties: "[1] public and community drinking water sources, [2] lakes, [3] rivers, [4] perennial or [5] intermittent streams, [6] creeks, [7] irrigation canals, [8] riparian areas, [9] playgrounds, [10] permanent sports fields, [11] amphitheaters, [12] public parks, and [13] public open space." Initiative § 2(4). Moreover, the definition of "area of special concern" is not exclusive to these 13 features and properties. *See* Initiative § 5; s*ee also* Final Title. The Initiative contemplates that local governments will designate other properties as areas of special concern. *See* Initiative § 5 ("law and regulations may be enacted to facilitate the operation of this article"); Final Title (indicating that an area of special concern may be "locally designated").

Implementation of a 2,500-foot setback for new oil and gas development facilities from 13 unrelated categories of properties and waters violates the single-subject rule. For example, a voter might favor a setback from "playgrounds" but not "intermittent streams," but must support both setbacks to secure approval of the

preferred outcome. *See In re Title, Ballot Title, Submission Clause, Summary for 1999-2000 No.29*, 972 P.2d 257, 265 (Colo. 1999) ("The constitutional prohibition against an initiative proposing more than a single subject 'prevents the proponents of an initiative from joining multiple subjects into a single initiative in the hope of attracting support from various factions which may have different or conflicting interests.'") (citing *In re Proposed Initiative "Public Rights in Waters II"*, 898 P.2d, 1076, 1079 (Colo. 1995)). Similarly, a voter might favor increased setbacks from occupied structures and disfavor the creation of new setbacks from the numerous "area[s] of special concern."[3] The occupied structure setback and the added setback from the 13 identified and the potentially later-designated, "area[s] of special concern" constitute impermissible "logrolling" in violation of the single-subject rule. *Id.*

As described above, the Initiative contains at least three distinct subjects. Therefore, the Court should reverse the determination of the Title Board that the Initiative contains a single subject and remand this matter to the Board with directions to strike the title, ballot title and submission clause for Initiative #78.

[3] Although Colorado law requires setbacks from buildings, the state does not require a setback from the varied properties and waters identified by the Proponents as "areas of special concern." *See generally* 2 Colo. Code Regs. §§ 404-1:604.a.

4. The Proposed Initiative Materially Differs from Previously Approved Setback Initiatives, 2013-2014, Numbers 85, 86 and 87.

The Proposed Initiative is materially different from measures 2013-2014 #85, 2013-2014 #86, and 2013-2014 #87 (collectively the "2014 Setback Measures"), for which this Court reviewed and approved titles, in *Matter of Title, Ballot Title & Submission Clause for 2013-2014 #85*, 328 P.3d 136 (Colo. 2014). In that case, the Court affirmed the Board's decision that the initiatives each contained a single subject "concerning a statewide setback requirement for new oil and gas wells." *See id.* 328 P.3d at 143, 148-49. However, the 2014 Setback Measures are materially different from Initiative #78 because they included neither (1) the ability of governments, including local governments, to increase the setback from occupied structures; nor (2) a setback from the 13 distinct categories of water and property included in the definition of "area[s] of special concern." *See id*. at 148-51. Therefore, the Court should not rely on its decision in *Matter of Title, Ballot Title & Submission Clause for 2013-2014 #85* to evaluate the Board's single-subject determination for the Proposed Initiative.

II. THE FINAL TITLE DOES NOT FAIRLY AND ACCURATELY INFORM VOTERS OF IMPORTANT ASPECTS OF THE MEASURE.

In violation of C.R.S. § 1-40-106(3), the Final Title for the Proposed Initiative fails to fully, fairly, and accurately inform voters of its central elements.

First, expression of the single subject as "concerning a statewide setback requirement for new oil and gas development facilities" is both inaccurate and misleading. The term "statewide setback" specifies that the Initiative would implement a uniform setback across the entire state. If approved, however, the Initiative would allow jurisdictions to require setbacks of varying lengths and extending from miscellaneous properties and hydrologic features. Further, "oil and gas development facilities" is a vague term with no common meaning. The term fails to provide notice that setbacks would apply to all new oil and gas wells, as well as other production, waste, and processing facilities. Additionally, the single-subject clause fails to make clear that the Initiative would significantly increase the current setback requirement.

Second, the Final Title does not provide notice of the types of property included within the definition of "area of special concern." Instead, the Final Title characterizes the setback in relation to "other specified and locally designated areas." And thus, the Final Title fails to notify the voters of the types of properties and hydrologic features to which the setbacks apply.

Third, the Final Title fails to inform voters that the Initiative includes a declaration by the "people of the state of Colorado" that "oil and gas development, including the use of hydraulic fracturing, has detrimental impacts on public health, safety, welfare, and the environment." *See* Initiative § 1(a).

A. Standard of Review and Preservation of the Issue

The Board is charged with setting a title that fully, fairly and accurately informs voters of the central elements of the measure, to enable them to make a thoughtful decision about its merits. C.R.S. § 1-40-106(3)(b); *see also In re Title for 1999-2000 No. 258(A)*, 4 P.3d at 1098. The title must be sufficiently clear so voters may "understand the principal features of what is being proposed," and because "a material omission can create misleading titles." *Id.* The requirement of a fair and accurate title is "intended to prevent 'surreptitious measures.'" *In re Title for 1999-2000 No. 29*, 972 P.2d at 268. It imposes on the Board the duty to "apprise the people of the subject of each measure by the title in order to prevent surprise and fraud from being practiced upon voters." *Id.* (internal quotation omitted). If the Board cannot comprehend a proposed initiative sufficiently to state the single subject clearly in its title, the initiative cannot be forwarded to the voters. *In re Title for 1999-2000 No. 25*, 974 P.2d at 465.

In their Motion for Rehearing, Petitioners properly raised and preserved their challenge regarding the Initiative's failure to comply with C.R.S. § 1-40-106(3).

See Motion for Rehearing at 3. The Board considered and denied the Petitioners' motion on this issue at the February 17, 2016 rehearing. *See* Final Title.

B. The Final Title's Single-Subject Clause Is Inaccurate and Misleading.

The Final Title's single-subject clause, that the Initiative "concern[s] a statewide setback requirement for new oil and gas development facilities," contains inaccurate and impermissibly vague terms. *See* Final Title. The term "statewide setback" denotes that the measure will impose a uniform setback across the state. This is simply untrue. Rather, the Initiative invites governments to implement setbacks of varying lengths and from different types of properties. *See* Initiative. Further, the term "oil and gas development facility" has no common meaning and is not otherwise within the general knowledge of an average voter. Proponents devised the term to obscure the true intent of their Initiative – to effectively ban future oil and gas drilling operations in Colorado.

The Petitioners therefore requested in their Motion for Rehearing that the Board draft the single-subject clause as follows: an amendment "concerning a minimum, non-waivable increase in the statewide setback requirement for new oil and gas ~~development facilities~~ associated wells, production, and processing facilities." Motion for Rehearing at 5 (Ex. A) (underlined language proposed by Petitioners). In violation of C.R.S. § 1-40-106(1), the Board denied Petitioners'

request and set an inaccurate and misleading Final Title that fails to reflect central features of the measure.

1. The Term "Statewide Setback" in the Final Title Is Inaccurate and Misleading.

The Initiative empowers state and local governments across various jurisdictions to enact different setbacks, with distances in excess of 2,500 feet. Initiative § 4. Notwithstanding, the Board framed the single subject of the Initiative as "concerning a statewide setback," which specifies that the setback for new oil and gas facilities will be uniform. *See* Final Title. Accordingly, the Court must reject the Final Title because it fails to accurately characterize the nature of the setbacks authorized by the Initiative.

Section 4 of the Initiative authorizes state and local governments to require new oil and gas development facilities to be located in excess of 2,500 feet from occupied structures. Initiative § 4. The Initiative further contemplates that local governments may enact "different setbacks" applicable to the same geographic area, in which in case, the "larger setback shall govern." *Id*. Therefore, a uniform, statewide setback is not a concept actually advanced by the Initiative. Rather, one purpose of the measure is to provide local governments with authority to create their own setbacks. *See*, *supra* § I.B.2.

Further, the topic of "statewide setback" does not logically encompass the creation of additional setbacks from "area[s] of special concern" that are "locally designated." *See* Final Title. The Final Title suggests that local jurisdictions may designate additional properties as areas of special concern, *e.g.*, a landfill or an organic farm. *See id*. As a result, oil and gas facilities may be set back from a non-uniform and ever-changing list of properties in various jurisdictions across the state. As an added nuance, a government's ability to increase the length of the setback is limited to "occupied structures." Initiative § 4. Therefore, passing of the Proposed Initiative would invite different setbacks for occupied structures and areas of special concern both within and across local jurisdictions throughout the state.

Notwithstanding that the Initiative authorizes varying setbacks within and between local jurisdictions across the state, the Final Title identifies the Initiative's single-subject as "concerning a statewide setback." Final Title. The Final Title is, therefore, misleading and must be returned to the Title Board. *See Matter of Title, Ballot Title & Submission Clause, & Summary Approved Feb. 12, 1992*, 830 P.2d 963, 970 (Colo. 1992) (inaccurately describing the effects of a measure as "statewide" was misleading, requiring reversal of the Board's decision).

Finally, to the extent the Board relied upon the Court's decision in *Matter of Title for 2013-2014 #85*, for its use of "statewide setback" in Initiative #78's Final Title, such reliance is misplaced. In *Matter of Title for 2013-2014 #85*, this Court considered whether use of the term "statewide setback" to describe a proposed setback for oil and gas wells was misleading or a catch phrase. In that case, the Court affirmed the use of "statewide setback," noting that the term "was drawn directly from the measure" and that it provided an "an accurate description of what the Proposed Initiative[] [2013-214 #85] would do, namely, create a 'statewide setback.'" *Matter of Title for 2013-2014 #85*, 328 P.3d at 146. The Court's reasoning in *2013-2014 #85* does not apply here. Initiative #78's text does not use the term "statewide setback" and, further, does not promulgate a uniform statewide setback. Therefore, Initiative #78 is distinguishable from *2013-2014 #85*.

2. <u>The Term "Oil and Gas Development Facilities" is Unclear and Misleading.</u>

The Board is required to set titles that are "fair, clear, and accurate, and must not mislead the voters." *In re Title for 1999-2000 No. 258(A)*, 4 P.3d at 1099. "Eliminating a key feature of the initiative from the titles is a fatal defect if that omission may cause confusion and mislead voters about what the initiative actually proposes." *Id.* Using language from the measure, the Final Title states that the setback applies to all new "oil and gas development facilities." However, a title's

repetition of language from an initiative does not ensure that the title reflects the initiative's true intent or accurately informs the electorate. *See In re Title, Ballot Title & Submission Clause For Proposed Initiatives 2001-2002 No. 21 & No. 22 ("English Language Education")*, 44 P.3d 213, 220-21 (Colo. 2002); *Matter of Title, Ballot Title, Submission Clause, & Summary by Title Bd. Pertaining to a Proposed Initiative on "Obscenity"*, 877 P.2d 848, 850 (Colo. 1994).

The Initiative's definition of "oil and gas development facilities" includes "oil and gas wells," as well as "pits and wells for the disposal of associated waste products," "underground injection wells" and "associated production and processing facilities." Initiative § 2(2) (emphasis added). However, the primary purpose of the measure is to significantly reduce, if not eliminate entirely, the drilling of new oil and gas wells in Colorado. In their Motion for Rehearing, Petitioners requested that the Board revise the Final Title to include the term "oil and gas associated wells," so the voters would understand the applicability of the 2,500-foot setback to all new wells. Motion for Rehearing at 3, 5 (Ex. A). The Board rejected this request and approved the term "oil and gas development facility" as it appears in the Initiative. *See* Final Title. The Board's failure to clarify that the minimum setback will prevent the drilling of new oil and gas wells

within 2,500 feet of occupied structures and the 13 miscellaneous areas of special concern is an omission that will mislead voters as to the Initiative's content.

When compared to the other sites included in the definition of "oil and gas development facility," oil and gas wells are significantly the most common facilities in Colorado. As of the date of this filing, there are approximately 49,410 producing oil and gas wells in Colorado, as compared to 683 underground injection wells and 176 gas processing plants. *See* Aff. of E. Hueni, attached hereto as Exhibit E,¶ 8. Moreover, locating an injection well or gas processing facility is more flexible than for an oil and gas well. Oil and gas wells must be drilled in locations that enable production of the resource – *i.e.* where the minerals are located. Whereas, waste or processing facilities may be located in virtually any location able to accommodate them. Thus, this measure will disproportionately impact the drilling of new oil and gas wells versus other types of facilities included in the definition of "oil and gas development facility."

Additionally, the term "oil and gas development facility" has no common meaning generally, or within the oil and gas industry. *See* Howard R. Williams & Charles J. Meyers, *Manual of Oil and Gas Terms* (16th ed. 2015) ("oil and gas development facility" is not included). It is not a term of art, and it does not appear

in the Oil and Gas Conservation Act or the COGCC rules.[4] C.R.S. §§ 34-60-101 *et seq*; 2 Colo. Code Regs. §§ 404-1 *et seq*. Most importantly, "oil and gas development facility" is not a term within the common understanding of the Colorado voters. Other than the Initiative itself, Petitioners are unaware of a single source of information informing voters that "oil and gas development facility" includes "oil and gas wells." Rather, it appears Proponents created this term to obscure the Initiative's true intent – to ban the drilling of new oil and gas wells. The Board's failure to clarify in the Final Title that the setback applies to oil and gas wells is an omission that will mislead voters. Therefore, the Court should reject the Final Title and remand this matter to the Board.

3. By Dramatically Increasing the Setback Requirement, the Initiative Will Effectively Ban New Oil and Gas Wells in Colorado.

The Final Title fails to mention that, if approved, the Initiative would increase the current setbacks for oil and gas wells and related facilities. *See* 2 Colo. Code Regs. §§ 404-1:604 ("Setbacks"). Because the increase in both (1) the length of the setback, and (2) the types or properties implicated by the setback is so

[4] The COGCC Rules define a similarly-worded term, "oil and gas facility," as: "equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, gathering, treatment, or processing of oil or natural gas." Although the terms "oil and gas facility" and "oil and gas development facility" share some of the same words, the definitions differ, increasing the potential for voter confusion.

substantial, Petitioners argued in their Motion for Rehearing that the single-subject clause should reflect that the measure concerns an "increase in the statewide setback requirement." Motion for Rehearing at 3, 5 (Ex. A). In error, however, the Board denied Petitioners' Motion. As demonstrated below, the increase in the setback proposed by the Initiative will result in an effective ban of new oil and gas operations in Colorado. Accordingly, the Board's failure to make clear that the Initiative increases setbacks for oil and gas wells will mislead voters as to the true intent of the measure.

Pursuant to current COGCC regulations, new oil and gas wells must be drilled no closer than 500 feet from most buildings. *See supra* § I.B.1. However, a landowner and an oil and gas operator may agree to a well location within the 500-foot setback. *Id*. The current Setback rules were recently amended and designed to balance the need to mitigate the effects of oil and gas drilling on landowners while protecting the private property rights of mineral owners. *See* Statement of Basis, Specific Statutory Authority, and Purpose New Rules and Amendments to Current Rules of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-1, Cause No. 1R Docket No. 1211-RM-04, available at, http://cogcc.state.co.us/documents/reg/Rules/2012/setback/Final_SetbackRules-StatementOfBasisAndPurpose.pdf, attached hereto as Exhibit F.

The difference is the land available for oil and gas development under the current COGCC rules and the Proposed Initiative is striking. Assuming a 500-foot setback for oil and gas wells from buildings in Weld County, approximately 8.22% of the lands in Weld County are unavailable for a surface location of an oil and gas well.[5] *See* Aff. of E. Hueni ¶ 7. If approved, the Initiative would eliminate 87.35% the land available for a surface location of an oil and gas well in Weld County.

Id. ¶ 6. Given the significance of the increase of the setbacks proposed by the Initiative and its effect on land available for oil and gas development, the Board should have, at a minimum, made clear that the current statewide setback would "increase." The Board's failure to include this fundamental element of the measure in the Final Title is misleading. *In re Title for 1999-2000 No. 258(A)*, 4 P.3d at 1099.

C. Omission of the Various Properties Encompassed in the Definition of Area of Special Concern is Misleading.

Rather than inform voters of the 13 incongruous property types defined as an "area of special concern," the Final Title describes the proposed setbacks in relation to "occupied structure[s]" and "other specified or locally designated

[5] This figure does not take into consideration other restrictions on oil and gas development. But, rather, it is meant to illustrate the effect of the current setback rules, and assuming no waiver by the landowner, on the siting of new oil and gas wells.

area[s]." Final Title (emphasis added). In their Motion for Rehearing, Petitioners argued that, at the very least, the title should reflect broad categories of property and hydrologic features from which the setbacks shall apply: specifically, "water sources, water bodies, and public places." *See* Motion, Ex A. In error, the Board denied Petitioners' Motion. The failure to describe the properties and water features as areas of special concern omits of a key feature of the Initiative, rendering the Final Title misleading. *In re Title for 1999-2000 No. 258(A)*, 4 P.3d at 1099.

As described above, amending the state's constitution to impose setbacks on oil and gas related facilities from the 13 properties identified as an "area of special concern" significantly changes existing law. *See supra* § I(B)(1). Without reference to the types of property implicated by the setback measure, a voter would be surprised to learn that the 2,500-foot setback implicates "intermittent streams," "playgrounds," "permanent sports facilities," and "irrigation canals," among other unrelated places. The Board's description of areas of special concern as "other specified or locally designated area[s]" improperly deprives the voters of sufficient information to understand the effect of a "yes" or "no" vote on the measure. *See In re Title for 1999-2000 No.29*, 972 P.2d at 267-68 (reversing Title Board because the title and summary did not sufficiently capture the measure's meaning); *Matter*

of Proposed Initiative On Parental Notification of Abortions For Minors, 794 P.2d 238, 241-42 (Colo. 1990) (reversing Title Board because the title failed to include the definition of abortion and, thus, the title did not "fairly reflect the contents of the proposed initiative").

Therefore, because the Final Title omits a key feature of the measure, the Court should reverse the Board's decision and remand this matter to the Board.

D. The Final Title Fails to Reflect that the Initiative declares on behalf of the people of Colorado that Oil and Gas Development has "Detrimental Impacts on Public Health, Safety, Welfare, and the Environment."

The Final Title does not include the following declaration of the Proposed Initiative:

> The people of the state of Colorado find and declare that:
>
> (a) Oil and gas development, including the use of hydraulic fracturing, <u>has detrimental impacts on public health, safety, welfare, and the environment</u>;

Initiative § 1(a) (emphasis added).

If the Initiative passes, the Colorado Constitution would memorialize this finding, impeding the state's ability to effectuate the purpose of the Oil and Gas Conservation Act in accordance with Section 34-60-102. Colorado's General Assembly has declared it within the "public interest" to "[f]oster the responsible, balanced development, production, and utilization of …oil and gas … in a manner

consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources." C.R.S. § 34-60-102 (emphasis added). A constitutional provision declaring "oil and gas development…has detrimental impacts on public health, safety, welfare, and the environment" conflicts with the declaration and purpose of the Oil and Gas Conservation Act and would dramatically impact, and potentially upend, the state's regulation of oil and gas.

Moreover, the Initiative specifically pinpoints one aspect of the completion process for an oil and gas well as having detrimental impacts: "hydraulic fracturing." Initiative § 1(a). The Proponents' identification of hydraulic fracturing as a practice with detrimental impacts emphasizes their objective to ban at least one specific oil and gas activity. As support for this conclusion, the Proponents submitted measure 2015-2016 #62 ("#62"), along with various other anti-oil and gas measures, to the Title Board, with the intent of banning hydraulic fracturing across the state. *See* 2015-2016 #62, attached hereto as Exhibit G. Although Proponents eventually withdrew Measure #62, Proponents and their supporters have persisted with their goal of prohibiting hydraulic fracturing in Colorado. In fact, a political action committee named "Yes for Health and Safety Over Fracking" was registered with the Secretary of State with the purpose of

"support[ing] ballot measures that establish local control of oil and gas development, mandatory setbacks from oil and gas development and oil and gas wells, the right to a healthy environment, and a ban on hydraulic fracturing in the Colorado constitution." *See* Committee Registration Form (emphasis added), attached hereto has Exhibit H. Accordingly, this declaration could ultimately lay the foundation for the Proponents' goal to ban hydraulic fracturing in Colorado. Therefore, failing to include the declaration in the Final Title renders the Title misleading.

CONCLUSION

WHEREFORE, for the reasons set forth above, the Petitioners respectfully request that the Court find that the Initiative does not contain a single subject and remand this matter to the Title Board with direction to return the Initiative to Proponents. In the alternative, Petitioners request that the Court remand the matter to the Title Board with the instructions to amend the Title consistent with the concerns set forth above.

Respectfully submitted this 16th day of March, 2016 by:

HOGAN LOVELLS US LLP

s/ *Elizabeth H. Titus*

Elizabeth H. Titus, No. 38070
Katy L. Bonesio, No. 48891
Hogan Lovells US LLP
1200 Seventeenth Street, Suite 1500
Denver, Colorado 80202
Phone: (303) 899-7300
Fax: (303) 899-7333
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I certify that on March 16, 2016, a true and correct copy of the above and foregoing **PETITIONERS' OPENING BRIEF IN SUPPORT OF PETITION FOR REVIEW OF PROPOSED INITIATIVE 2015-2016 #78 ("MANDATORY SETBACK FOR OIL AND GAS DEVELOPMENT")** was electronically filed with the Court and served via ICCES upon:

Martha Tierney, Esq.
Tierney Lawrence LLC
225 E. 16th Street,
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Attorneys for Respondents

Suzanne Staiert
Colorado Department of State
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Denver, CO 80203

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Office of Legislative Legal Svs.
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Denver, CO 80203

Frederick R. Yarger
Solicitor General
1300 Broadway
Denver, CO 80203

s/ Helen Hyatt

DATE FILED: March 16, 2016 2:49 PM

Exhibit A

RECEIVED
JAN 21 2016
S. WARD
9:12 A.M.
Colorado Secretary of State

Clean
Initiative 2015-2016 #78

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

SECTION 1. In the constitution of the state of Colorado, **add** article XXX as follows:

ARTICLE XXX

Mandatory Setback from Oil and Gas Development

Section 1. Purposes and findings. THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT:

(a) OIL AND GAS DEVELOPMENT, INCLUDING THE USE OF HYDRAULIC FRACTURING, HAS DETRIMENTAL IMPACTS ON PUBLIC HEALTH, SAFETY, WELFARE, AND THE ENVIRONMENT;

(b) SUCH IMPACTS ARE REDUCED BY LOCATING OIL AND GAS DEVELOPMENT FACILITIES AWAY FROM OCCUPIED STRUCTURES AND AREAS OF SPECIAL CONCERN; AND

(c) TO PRESERVE PUBLIC HEALTH, SAFETY, WELFARE, AND THE ENVIRONMENT, THE PEOPLE DESIRE TO ESTABLISH A SETBACK REQUIRING ALL NEW OIL AND GAS DEVELOPMENT FACILITIES IN THE STATE OF COLORADO TO BE LOCATED AWAY FROM OCCUPIED STRUCTURES, INCLUDING HOMES, SCHOOLS AND HOSPITALS, AS WELL AS AREAS OF SPECIAL CONCERN.

Section 2. Definitions. FOR PURPOSES OF THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "OIL AND GAS DEVELOPMENT" MEANS EXPLORATION FOR AND DRILLING, PRODUCTION, AND PROCESSING OF OIL, GAS, OTHER GASEOUS AND LIQUID HYDROCARBONS, AS WELL AS THE TREATMENT AND DISPOSAL OF WASTE ASSOCIATED WITH SUCH EXPLORATION, DRILLING, PRODUCTION, AND PROCESSING. "OIL AND GAS DEVELOPMENT" INCLUDES HYDRAULIC FRACTURING.

(2) "OIL AND GAS DEVELOPMENT FACILITY" INCLUDES THE SITE OF OIL AND GAS WELLS, PITS AND WELLS FOR THE DISPOSAL OF ASSOCIATED WASTE PRODUCTS, INCLUDING UNDERGROUND INJECTION WELLS, AND ASSOCIATED PRODUCTION AND PROCESSING FACILITIES.

(3) "OCCUPIED STRUCTURE" MEANS ANY BUILDING OR STRUCTURE THAT REQUIRES A CERTIFICATE OF OCCUPANCY, OR BUILDING OR STRUCTURE INTENDED FOR HUMAN OCCUPANCY, INCLUDING HOMES, SCHOOLS, AND HOSPITALS.

(4) "AREA OF SPECIAL CONCERN" INCLUDES PUBLIC AND COMMUNITY DRINKING WATER SOURCES, LAKES, RIVERS, PERENNIAL OR INTERMITTENT STREAMS, CREEKS, IRRIGATION CANALS, RIPARIAN AREAS, PLAYGROUNDS, PERMANENT SPORTS FIELDS, AMPHITHEATERS, PUBLIC PARKS, AND PUBLIC OPEN SPACE.

(5) "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 OR SECTION 16 OF ARTICLE XIV OF THE COLORADO CONSTITUTION.

Section 3. Grant of authority. THE PEOPLE OF THE STATE OF COLORADO HEREBY ESTABLISH THAT ALL NEW OIL AND GAS DEVELOPMENT FACILITIES, INCLUDING THOSE THAT USE HYDRAULIC FRACTURING, MUST BE LOCATED AT LEAST TWO THOUSAND FIVE HUNDRED FEET FROM AN OCCUPIED STRUCTURE OR AREA OF SPECIAL CONCERN. FOR PURPOSES OF THIS ARTICLE, RE-

ENTRY OF AN OIL OR GAS WELL PREVIOUSLY PLUGGED OR ABANDONED SHALL BE CONSIDERED A NEW WELL.

Section 4. Ability of the state or a local government to establish larger setbacks. A STATE OR A LOCAL GOVERNMENT MAY REQUIRE THAT NEW OIL AND GAS DEVELOPMENT FACILITIES BE LOCATED A LARGER DISTANCE AWAY FROM OCCUPIED STRUCTURES THAN GRANTED IN SECTION 3 OF THIS ARTICLE. IN THE EVENT THAT TWO OR MORE LOCAL GOVERNMENTS WITH JURISDICTION OVER THE SAME GEOGRAPHIC AREA ESTABLISH DIFFERENT SETBACK DISTANCES, THE LARGER SETBACK SHALL GOVERN.

Section 5. Self-executing - severability - conflicting provisions. ALL PROVISIONS OF THIS ARTICLE ARE SELF-EXECUTING, ARE SEVERABLE, AND SHALL SUPERSEDE CONFLICTING STATE AND LOCAL LAWS AND REGULATIONS. LAWS AND REGULATIONS MAY BE ENACTED TO FACILITATE THE OPERATION OF THIS ARTICLE, BUT CANNOT IN ANY WAY REDUCE THE SETBACK STANDARD OR THE POWERS AND RIGHTS ESTABLISHED IN THIS ARTICLE.

DATE FILED: March 16, 2016 2:50 PM

Exhibit B

Ballot Title Setting Board

Proposed Initiative 2015-2016 #78[1]

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

An amendment to the Colorado constitution concerning a statewide setback requirement for new oil and gas development facilities, and, in connection therewith, changing setback requirements to require any new oil and gas development facility in the state to be located at least 2,500 feet from the nearest occupied structure or other specified or locally designated area and authorizing the state or a local government to require new oil and gas development facilities to be located more than 2,500 feet from the nearest occupied structure.

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 a statewide setback requirement for new oil and gas development facilities, and, in connection therewith, changing setback requirements to require any new oil and gas development facility in the state to be located at least 2,500 feet from the nearest occupied structure or other specified or locally designated area and authorizing the state or a local government to require new oil and gas development facilities to be located more than 2,500 feet from the nearest occupied structure?

Hearing February 3, 2016:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 1:47 p.m.

Rehearing February 17, 2016:
Motion for Rehearing denied except to the extent that the Board made changes to the titles.
Hearing adjourned 11:25 a.m.

---

[1] Unofficially captioned **"Mandatory Setback for Oil and Gas Development"** by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

DATE FILED: March 16, 2016 2:50 PM

Exhibit C

Mike Mauer, Director
Legislative Council Staff

Colorado Legislative Council
200 East Colfax Avenue Suite 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
TDD 303-866-3472

Dan L. Cartin, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 East Colfax Avenue Suite 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Facsimile 303-866-4157
Email: olls.ga@state.co.us

January 11, 2016

Bruce Mason
320 20th Street
Boulder, CO 80302

Karen Dike
708 Hayden Street
Longmont, CO 80503

Re: Proposed Initiative Measure 2015-2016 #78

Dear Mr. Mason and Ms. Dike:

Pursuant to section 1-40-105 (2), C.R.S., we hereby notify you that the above proposed measure does not raise any additional comments from our offices that have not been raised in earlier memoranda or hearings on your proposed measure on this topic. Section 1-40-105 (2), C.R.S., provides in part:

> **1-40-105. Filing procedure - review and comment - amendments - filing with secretary of state.** (2) . . . If the directors have no additional comments concerning the amended petition, they may so notify the proponents in writing, and, in such case, a hearing on the amended petition pursuant to subsection (1) of this section is not required.

Rule 12 of the *Rules for Staff of Legislative Council and Office of Legislative Legal Services: Review and Comment Filings*, adopted by the Legislative Council on September 6, 2000, requires that such determination and notification be made no later than 72 hours after the filing. Your measure was received by our office on January 8, 2016.

This letter serves as the written notice required by section 1-40-105 (2), C.R.S. It is our understanding that pursuant to that section, no review and comment hearing pursuant to section 1-40-105 (1), C.R.S., is required.

Very truly yours,

Dan Cartin, Director
Office of Legislative Legal Services

Mike Mauer, Director
Legislative Council

DATE FILED: March 16, 2016 2:51 PM

Exhibit D

RECEIVED
FEB 10 2016
S. WARD
2:52 P.M.
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 #78

MOTION FOR REHEARING

Registered electors, Shawn Martini and Scott Prestidge, through their legal counsel, Hogan Lovells US LLP, request a rehearing of the Title Board for Initiative 2015-2016 #78. As set forth below, Mr. Martini and Mr. Prestidge 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 February 3, 2016, the Board set the title as follows:

> An amendment to the Colorado constitution concerning a statewide setback requirement for new oil and gas development facilities, and, in connection therewith, changing existing setback requirements to require any new oil and gas development facility to be located at least 2,500 feet from the nearest occupied structure and other specified areas and authorizing the state or a local government to require new oil and gas development facilities to be located more than 2,500 feet from the nearest occupied structure.

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

> Shall there be an amendment to the Colorado constitution concerning a statewide setback requirement for new oil and gas development facilities, and, in connection therewith, changing existing setback requirements to require any new oil and gas development facility to be located at least 2,500 feet from the nearest occupied structure and other specified areas and authorizing the state or a local government to require new oil and gas development facilities to be located more than 2,500 feet from the nearest occupied structure?

GROUNDS FOR RECONSIDERATION

I. The Initiative Impermissibly Contains Multiple Subjects.

The Colorado Constitution requires that a citizen initiated measure contain only a single subject, which shall by clearly expressed in its title. Colo. Const. art. V., § 1(5.5); see also C.R.S. § 1-40-106.5. The single-subject requirement prevents proponents from combining multiple subjects to attract a "yes" vote from voters who might otherwise vote "no" on one or more of the subjects if proposed separately. *Matter of Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 333 P.3d 76, 79 (Colo. 2014). Accordingly, an initiative's subject matter "must be

necessarily and properly connected rather than disconnected or incongruous." *Id.* (citing *In re Proposed Initiative for 2011–2012 # 45*, 274 P.3d 576, 579 (Colo.2012)). Titles containing general "umbrella proposals" to unite separate subject are unconstitutional. *Id.* (citing *In re Proposed Initiative for 2011–2012 # 45*, 274 P.3d 576, 579 (Colo. 2012)).

Contrary to the requirement that every constitutional amendment proposed by initiative be limited to a single subject, which shall be clearly expressed in its title, the Board set title for initiative #78 despite the fact that it contains multiple, distinct and separate purposes that are not dependent upon or connected with each other. Specifically, under the umbrella of a creating a uniform "statewide setback requirement for oil and gas development facilities" the initiative actually includes the following several, unrelated subjects:

(1) Imposing an increased, non-waivable, minimum setback requirement of 2,500 feet for new oil and gas development facilities from occupied structures (#78 § 3);

(2) Imposing a new, minimum setback requirement of 2,500 feet for new oil and gas development facilities from "areas of special concern," which includes public and community drinking water sources, lakes, rivers, perennial or intermittent streams, creeks, irrigation canals, riparian areas, playgrounds, permanent sports fields, amphitheaters, public parks, and public open space (#78 § 3);

(3) Authorizing state or local governments to impose setback distances greater than 2,500 feet and without limitation for new oil and gas development facilities from occupied structures and, thus, authorizing local government to ban oil and gas activities within their boundaries (#78 § 4); and

(4) Creating a new classification of property called "areas of special concern," which includes unrelated and disjointed types of property, including public and community drinking water sources, lakes, rivers, perennial or intermittent streams, creeks, irrigation canals, riparian areas, playgrounds, permanent sports fields, amphitheaters, public parks, and public open space (#78 § 2(4)).

Each of these subjects is not interdependent or connected to the other. The Title Board therefore lacks jurisdiction to set title and title setting should be denied.

II. The Title and Submission Clause as Drafted Fail to Describe Important Aspects of the Measure.

A measure's title and submission clause must "correctly and fairly express the true intent and meaning" of the measure. C.R.S. § 1-40-106(3)(b). The title and submission clause should 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 Title, Ballot Title & Submission Clause for 2009–2010 No. 45*, 234 P.3d 642, 648 (Colo. 2010) "[A]

material omission can create misleading titles." *In re Title, Ballot and Submission Clause 1999-2000 #258A*, 4 P.3d 1094, 1098 (Colo. 2000).

The title and submission clause for measure #78 are misleading and confusing because they fail to describe important aspects of the measure. Among other defects, the title and submission clause:

(1) Fail to reflect that the measure increases the current setback requirements for new oil and gas wells, production and processing facilities;

(2) Fail to reflect the measure's declaration, by the people of Colorado, that oil and gas development has detrimental impacts on public health, safety, welfare, and the environment (#78 § 1(a));

(3) Improperly utilize a vague reference to "oil and gas development facilities," a term that has no common meaning and fails to provide notice that the measure's definition of oil and gas development facilities applies to oil and gas associated wells, production, and processing facilities (#78 § 2(2));

(4) Fail to inform the voters of distinctions between measure 2015-2016 #78 and measure 2015-2016 #82, by failing to describe the difference between "oil and gas development facilities" and "wells associated with oil and gas development";

(5) Fail to provide notice of the property types included within the term "areas of special concern," and instead stating that the setbacks are in relation to "other specified areas," which does not put the voters on notice of anything (#78 § 2(4)); and

(6) Fail to make clear that the measure authorizes state and local governments to impose setback requirements in excess of 2,500 feet and without limitation for new oil and gas development facilities from occupied structures (#78 § 4).

Therefore, in the alternative, opponents request a title and submission clause that reflect these important aspects of the measure as set forth in the proposed title and submission clause, attached as Exhibit A.

CONCLUSION

Based on the foregoing, Mr. Martini and Mr. Prestidge request a rehearing of the Title Board for Initiative 2015-2016 #78. The initiative is incapable of being expressed in a single subject that clearly reflects the intent of the proponents, and therefore the Title Board lacks jurisdiction to set a title and should reject the measure. Alternatively, Mr. Martini and Mr. Prestidge respectfully request that the Title Board amend the title and submission clause consistent with the concerns set forth above and as set forth in Exhibit A.

Respectfully submitted this 10th day of February, 2016 by:

HOGAN LOVELLS US LLP

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Elizabeth H. Titus, No. 38070
Hogan Lovells US LLP
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Attorneys for Scott Prestidge and Shawn Martini

Objectors' addresses:

Scott Prestidge
2885 Quebec Street
Denver, CO 80207

Shawn Martini
3043 South Indiana Street
Lakewood, CO 80228

Exhibit A

Ballot Title Setting Board

Proposed Initiative 2015-2016 #78

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

An amendment to the Colorado constitution concerning a minimum, non-waivable increase in the statewide setback requirement for new oil and gas ~~development facilities~~associated wells, production, and processing facilities, and, in connection therewith, declaring that oil and gas development has detrimental impacts on public health, safety, welfare, and the environment; changing the existing setback requirements to require ~~any~~all new oil and gas associated wells, production, and processing facilities ~~development facility~~ to be located at least 2,500 feet from the nearest occupied structure and other specified areas, including certain water sources, water bodies, and public places, and authorizing the state or a local government to impose a setback in excess of 2,500 feet for ~~require~~ new oil and gas associated wells, production, and processing facilities ~~development facilities to be located more than 2,500 feet~~ from the nearest occupied structure.

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 a minimum, non-waivable increase in the statewide setback requirement for new oil and gas ~~development facilities~~associated wells, production, and processing facilities, and, in connection therewith, declaring that oil and gas development has detrimental impacts on public health, safety, welfare, and the environment; changing the existing setback requirements to require ~~any~~all new oil and gas associated wells, production, and processing facilities ~~development facility~~ to be located at least 2,500 feet from the nearest occupied structure and other specified areas, including certain water sources, water bodies, and public places, and authorizing the state or a local government to impose a setback in excess of 2,500 feet for ~~require~~ new oil and gas associated wells, production, and processing facilities ~~development facilities to be located more than 2,500 feet~~ from the nearest occupied structure?

DATE FILED: March 16, 2016 2:51 PM

Exhibit E

SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, CO 80203 Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2015-2016 #78 ("Mandatory Setback for Oil and Gas Development") **Petitioners: SHAWN MARTINI and SCOTT PRESTIDGE** **v.** **Respondents: BRUCE MASON and KAREN DIKE** **and** **Title Board: SUZANNE STAIERT; FREDERICK YARGER; and JASON GELENDER**	▲COURT USE ONLY▲
Attorneys for Petitioners: Elizabeth H. Titus, No. 38070 Katy L. Bonesio, No. 48891 Hogan Lovells US LLP 1200 Seventeenth Street, Suite 1500 Denver, Colorado 80202 Phone: (303) 899-7300 Fax: (303) 899-7333	Case No. 2016SA71

AFFIDAVIT OF EMILY HUENI IN SUPPORT OF PETITIONERS' OPENING BRIEF IN SUPPORT OF PETITION FOR REVIEW OF PROPOSED INITIATIVE 2015-2016 #78 ("MANDATORY SETBACK FOR OIL AND GAS DEVELOPMENT")

I, Emily Hueni, have personal knowledge of the matters addressed in this Affidavit. I am over the age of eighteen (18) and hereby deposes and says that the following information is true to the best of my knowledge and belief:

1. I am a self-employed Geographic Information Systems (GIS) professional and data analyst and have been working in the field of geospatial data sciences since 2010. I obtained a technical certificate in Geographic Information Systems from the University of Denver in June 2013. As GIS professional and data analyst, I have professional experience in field data collection, data processing, and data visualization of geographic information.

2. Based upon my knowledge and experience, I performed a study to determine the percentage of lands, located in Weld County, Colorado, covered by a 2500-foot radius from the following features in the county:

    a. Buildings with addresses,
    b. Irrigation ditches and canals,
    c. Perennial and intermittent streams,
    d. Rivers, and
    e. Riparian area and wetlands.

3. I obtained the data for each of the features listed in paragraph 3 from publicly availably sources that are generally recognized within the field of GIS as being reliable. These sources in include:

    a. Address Point Data from Weld County, at: https://weldcounty.sharefile.com/share#/view/s605bee99e574342a?_k=ezmbzx. I obtained this data on March 2, 2016.

    b. Parcel Data from Weld County, at: https://weldcounty.sharefile.com/share#/view/s9c6cb948ea94167a?_k=1xya51. I obtained this data on March 7, 2016.

    c. National Hydrologic dataset (NHDS) from United States Geologic Survey, data set HD_1019_South_Platte_HU4.gdb. I obtained his data on February 29, 2016.

d. National Wetlands Inventory dataset from the United States Fish and Wildlife Inventory, at http://www.fws.gov/wetlands/Data/State-Downloads.html. I obtained his data on February 29, 2016.

4. In order to determine the percent of Weld County lands that would be included within a 2500-foot radius from all buildings with addresses in Weld County, I used the Address Point Data and Parcel Data identified in paragraph 3(a) and paragraph 3(b) above as follows:

   a. Address Point Data consists of a series of points representing address locations in Weld County. It is closely related to parcel data, which distinguishes how land is divided up by surface ownership. Although address points are not always representative of building units they are closely correlate to existing structures in Weld County. To reduce the amount of error existing in the Address Point Data, points were related back to their corresponding parcels and were filtered by type. Address points that were on land classified as "Residential", "Commercial", "Industrial", or "Exempt" were included in the study, while points that were located on parcels classified as "Vacant Land", "Real State Assd", or "Natural Rsrc" were filtered out.

   b. To understand the remaining error in the building locations data used for this Map (after the data had been filtered by parcel type), a sample area that was 12 miles by 18 miles was chosen to study the accuracy. I checked each address point against buildings demonstrated in Google Earth Imagery in this region and then compared results to the Weld County data. The results were:

      i. 5% of the points were greater than 200ft off.
      ii. 11% of the points were off but by less than 200ft.
      iii. 84% were correctly positioned over building units.

   c. Therefore, 95% of the address data points are correctly positioned or only marginally off of their true locations. Although the end user should be aware that there is slight error in this data, it is overall a good indicator of building distribution across Weld County.

5. In order to determine what lands, in addition to those described in paragraph 4 above, would be included with a 2500-foot radius of irrigation ditches and

canals, perennial and intermittent streams, rivers, riparian areas and wetlands in Weld County, I used the data identified in paragraph 3(c) and paragraph 3 (d) above as follows:

a. Data from NHDS includes two layers: NHDFlowline and NHDWaterbody. All features from the NHDWaterbody dataset were included in my study. The study also includes the following features from the NHDFlowline data: Canal/Ditch; Canal/Ditch Type = Aqueduct; Stream/River: Hydrographic Category = Intermittent; and Stream/River: Hydrographic Category = Perennial.

6. Based on the results upon the features, I was able to identify using the data set I applied a 2500-foot buffer to these using GIS methodology and I conclude that 87.35% of the lands in Weld County are within a 2500-ft radius of buildings with addresses, irrigation ditches and canals, perennial and intermittent streams, rivers, and riparian area and wetlands.

7. Using the same methodology described in paragraph 4, I conducted similar analysis to determine the percentage of lands in Weld County within 500 foot radius of building with addresses and conclude that 8.22% of the lands in Weld County are within a 500 feet of such buildings.

8. Based upon a queries of producing oil and gas wells, underground injection wells, and gas processing facilities performed on data available from the Colorado Oil and Gas Conversation Commission on March 15, 2016, I determined the following:

   a. There are 49,410 producing oil and gas wells in Colorado.

   b. There are 683 underground injection wells in Colorado.

   c. There are 176 gas processing plants in Colorado.

Further Affiant sayeth naught.

Dated this16th day of March, 2016.

Emily Hueni

Emily Hueni

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

This instrument was acknowledged before me this 16th day of March 2016, by Emily Hueni.

WITNESS MY HAND AND OFFICIAL SEAL.

HELEN R. HYATT
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19894017876
MY COMMISSION EXPIRES DECEMBER 13, 2017

Helen R. Hyatt

Notary Public

My commission expires: 12-13-17.

DATE FILED: March 16, 2016 2:51 PM

Exhibit F

Statement of Basis, Specific Statutory Authority, and Purpose
New Rules and Amendments to Current Rules of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-1

Cause No. 1R Docket No. 1211-RM-04
Setbacks

This statement sets forth the basis, specific statutory authority, and purpose for new Rules and amendments to the Rules and Regulations and Rules of Practice and Procedure of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-1 ("Rules," or "Commission Rules") promulgated by the Colorado Oil and Gas Conservation Commission ("Commission") on February 11, 2013 concerning location requirements for Oil and Gas Facilities, mitigation and notice requirements, and related matters. The new and amended Rules resulting from this rule making are referred to collectively herein as the "Setback Rules."

Overview of Purpose and Intent

These Setback Rules are promulgated to protect the safety and welfare of the general public from environmental and nuisance impacts resulting from oil and gas development in Colorado, including spills, odors, noise, dust, and lighting.

The Commission considered a diverse array of stakeholder comments, positions, and alternative proposed rules regarding setback distances, mitigation measures, and notice and communication requirements through the stakeholder process and during the formal rule making hearing. Local governments, the regulated community, environmental and citizen interest groups, homebuilders, and agricultural and farming interests were among the stakeholder groups that participated in both the stakeholder process and as Parties to the rule making. The Setback Rules ultimately adopted by the Commission strike an appropriate balance between the stakeholders' competing positions, and between mineral estate and surface estate owners' rights. The Setback Rules provide strong protective measures, including notice and communication requirements, without imposing undue costs or restrictions on oil and gas exploration and production activities in the state.

The Setback Rules are intended to require Operators to eliminate, minimize, or mitigate the impacts of oil and gas operations conducted in Designated Setback Locations by utilizing technically feasible and economically practicable protective measures. Requiring oil and gas operations to be located a greater distance away from occupied buildings is one type of protective measure. However, increasing the minimum setback distance has implications for, and can adversely affect, mineral owners' property rights, existing and planned surface uses, contractual rights and obligations, and technical and economic considerations. Mindful of these potential implications, the Commission opted to increase the existing setback distances of

350 feet in High Density Areas and 150 feet elsewhere to a uniform 500 feet statewide, and to impose technically advanced best management practices and protective measures to eliminate, minimize or mitigate potential nuisances and other adverse impacts for all Oil and Gas Locations within 1,000 feet of occupied buildings. In addition, Oil and Gas Locations may not be located within 1,000 feet of specified "High Occupancy Buildings," including schools, day care centers, hospitals, nursing homes, and correctional facilities, without Commission approval following a public hearing, and such approval will be contingent on extensive mitigation measures.

The Commission also has adopted Rules that will enhance notice to and communication with Building Unit owners within 1,000 feet of oil and gas operations, and will increase opportunities for local government representatives, including Local Governmental Designees ("LGDs"), to review and comment on new Oil and Gas Locations proposed within their jurisdictions. As development expands into more urbanized areas, engaging nearby residents is increasingly important. It has been Commission Staff's experience that communicating with persons who live or work near drilling operations before those operations begin is an effective means of addressing concerns about what will occur, how long it will take, and what measures will be taken to eliminate, minimize, or mitigate potential nuisances and adverse impacts. The Commission believes these Rules establish a regulatory framework that protects communities and the environment surrounding oil and gas activities while preserving reasonable access to the mineral estate throughout the state.

These Setback Rules are not intended to alter, impair, or negate local governmental authority to regulate matters of local concern, including land use, related to oil and gas operations, or to regulate matters of mixed local and state concern provided such local regulations are not in operational conflict with these Rules.

These Setback Rules do not govern surface development that occurs subsequent to the initiation of oil and gas operations at a location. These Rules do not preclude occupied building units from being constructed within 500 feet of an Oil and Gas Location pursuant to a Surface Use Agreement or Site Specific Development Plan.

These Setback Rules are not intended to address potential human health impacts associated with air emissions related to oil and gas development. The Commission, after consulting with the Colorado Department of Health and Environment ("CDPHE"), believes that there are numerous data gaps related to oil and gas development's potential effect on human health and that such data gaps warrant further study.

In adopting the new and amended Rules, the Commission relied upon the entire administrative record for this rule making proceeding, which formally began on October 1, 2012 and informally

began in February 2012. This record includes the Commission Staff's proposed Rules, revisions thereto and numerous recommended modifications and alternatives; public comment, written testimony, and exhibits; and hours of public and party hearings. In formulating its proposed Rules, Commission Staff benefitted greatly from significant data and information gathered during a setback stakeholder process that occurred approximately monthly from February 2012 through October 2012. During this stakeholder process, the Commission Staff received significant information from diverse stakeholders, including concerned citizens, environmental and conservation groups, home builders, agricultural groups, local governments, the regulated industry and the CDHPE.

Statutory Authority

The Commission has the general authority to make and enforce these Setback Rules under § 34-60-105(1), C.R.S., which provides: "The commission has jurisdiction over all persons and property, public and private, necessary to enforce the provisions of this article, and has the power to make and enforce rules, regulations, and orders pursuant to this article, and to do whatever may reasonably be necessary to carry out the provisions of this article." The Commission' specific authority to promulgate each of the new and amended Rules at issue in this rule making is set forth below.

Effective Date

The new and amended Setback Rules adopted by the Commission on February 11, 2013 shall become effective on August 1, 2013.

Identification of New and Amended Rules

New or amended Rules were adopted in the 100 Series (Definitions), 300 Series (Drilling, Development, Production, and Abandonment), 600 Series (Safety Regulations), and 800 Series (Aesthetic and Noise Control Regulations) of the Commission's Rules.

Amendments and Additions to Rules by Series

The Setback Rules include those that correct any typographical and grammatical errors. The general authority for adoption of these Setback Rules is set out in the Statutory Authority section above and is generally applicable to all amendments and new Rules. The amendments also include revisions to reconcile the renumbering of various Rules and to make uniform the use of new or amended terms of art. Such clarifying, or non-substantive revisions, have been made with respect to Rules 216, 317, 317B, 503, 906, 1102, 1202, 1204, and 1205.

100-Series Definitions

The revised 100-Series Rules contain many definitions that occur throughout the Rules and throughout the Oil and Gas Conservation Act, § 34-60-101, C.R.S., that have been moved to, or included in, this Series to improve the usefulness and readability of the Series. The following Rules have been added or substantively amended:

BUFFER ZONE SETBACK

Basis: The statutory basis for this amendment is § 34-60-106(11)(a)(II), C.R.S., which provides: The Commission shall "[p]romulgate rules, in consultation with the department of public health and environment, to protect the health, safety, and welfare of the general public in the conduct of oil and gas operations."

Purpose: The purpose of this amendment is to impose heightened mitigation, notice, and communication requirements on Operators where a Well or Production Facility is proposed to be located within 1,000' of a Building Unit.

DESIGNATED SETBACK LOCATION

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: The purpose of this amendment is to create a term of art for all proposed Oil and Gas Locations located within, or proposed to be located in, any Buffer Zone Setback, an Exception Zone, within 1,000' of a High Occupancy Building Unit, or within 350' of a Designated Outside Activity Area.

DESIGNATED OUTSIDE ACTIVITY AREA

Basis: § 34-60-106(11)(a)(II), C.R.S. and § 34-60-106(10), C.R.S., which provides: The commission shall "promulgate rules and regulations to protect the health, safety, and welfare of any person at an oil or gas well."

Purpose: This definition has been revised to conform to other changes arising out of this Setback Rulemaking. The Commission has also revised this Rule to reject the Colorado Court of Appeals' interpretation of the existing Rule articulated in its decision captioned *Chase Sutak v. Colo. Oil and Gas Conservation Comm'n and Magpie Operating Inc.,* No. 11CA1249 (June 7, 2012). By revising this Rule, the Commission intends to confer substantial discretion in the Commission to determine whether a Designated Outside Activity Area exists under the totality of the circumstances and consistent with statutory purposes. The amended Rule also provides local governments express authority to file applications designating outdoor venues or recreation areas within their jurisdictions as Designated Outside Activity Areas.

EXCEPTION ZONE LOCATION

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: The purpose of this amendment is to prohibit any Well or Oil and Gas Location proposed to be located within 500' of a Building Unit unless, among other requirements, protective measures are put in place that are sufficient to eliminate, minimize or mitigate potential adverse impacts to public health, safety, welfare, the environment, and wildlife to the maximum extent technically feasible and economically practicable.

HIGH OCCUPANCY BUILDING UNIT

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: The purpose of this definition is to identify those buildings which are designed for and occupied by large numbers of people and, on that basis, warrant heightened standards and practices under specific Commission Rules.

BUILDING UNIT

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: The purpose of this definition is to identify those buildings which are designed for human occupancy and, on that basis, warrant heightened standards and practices under specific Commission Rules.

SURFACE OWNER

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: The Setback Rules contemplate that Operators and Surface Owners may enter into a Surface Use Agreement, require Operators to consult with Surface Owners, and, among other things, provide for notice of operations to Surface Owners. This definition incorporates the definition of Surface Owner by reference provided by § 34-60-103(10.5), C.R.S.

SURFACE USE AGREEMENT

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: The purpose of this amendment is to define Surface Use Agreement as a term of art as used throughout the Rules.

URBAN MITIGATION ZONE

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: The purpose of this amendment is to impose heightened mitigation, notice, and communication requirements on Operators where a Well or Oil and Gas Location is proposed to be located within an area containing at least 22 Building Units in a 1,000' radius of the well, or in an area containing at least 11 Building Units in a 1,000' semi-circule of the Well, or within an area containing one High Occupancy Building within 1,000' feet of the Well.

300-SERIES

The following Rules were amended:

RULE 303 (REQUIREMENTS FOR FORM 2, APPLICATION FOR PERMIT-TO-DRILL, DEEPEN, RE-ENTER, OR RECOMPLETE, AND OPERATE; FORM 2A, OIL AND GAS LOCATION ASSESSMENT)

Basis: § 34-60-106(1)(f), § 34-60-106(11)(a)(II) and § 34-60-106(14), C.R.S.

Purpose: Substantial additions and revisions have been made to Rule 303, some of a technical nature and some merely to clarify the application of the Rule or delete extraneous language. Director approval is now required for all Form 2A, Oil and Gas Location Assessment, applications. This change conforms the Rule to Commission Staff's long-standing practice, as all Form 2As are reviewed and processed in the same manner.

Other revisions to Rule 303 include Rule 303.b.(3)D., which requires that all improvements be identified and included on a scaled drawing. Additionally, if a proposed Oil and Gas Location is within 1,000 feet of a Building Unit, operators must submit additional information with their application materials (Rule 303.b.(3)(J)). Such heightened informational requirements will enable the Commission to quickly determine whether a pending application triggers additional analysis and safeguards under the new and amended Rules.

RULE 305 (NOTICE, COMMENT, APPROVAL)

Basis: § 34-60-106(1)(f), § 34-60-106(11)(a)(II) and § 34-60-106(14), C.R.S.

Purpose: Substantial additions and revisions have been made to Rule 305. Under the existing Rules, LGDs and the public have 20 days to comment on pending applications. Depending on the proposed location, the CDPHE and Colorado Division of Parks and Wildlife may also comment on a pending application. Under the Setback Rules this comment period, upon the written request of the LGD, shall be extended to 40 days for proposed facilities located within an Exception Zone, i.e., a facility proposed to be located 500 feet or less from a Building Unit.

Rule 305 was substantially revised to include notice to Building Unit owners as well as surface owners. Once Commission Staff have determined a Form 2A Oil and Gas Location Assessment ("OGLA") is complete, the applicant must provide certain information, via an "OGLA Notice," to the surface owners within 500 feet, as previously required, and to all owners of Building Units within the Exception Zone. Lastly, operators must provide a Buffer Zone Notice to owners of Building Units within the Buffer Zone, i.e., 1,000 feet of the proposed location.

The OGLA Notice and Buffer Zone Notice will alert surface and Building Unit owners that they will have an opportunity to meet with the operator to discuss their concerns about proposed oil and gas operations, including what will occur, how long it will take, and what measures will be taken to eliminate, minimize, or mitigate potential impacts of the operations, including odors, noise, dust, and lights.

The Commission believes these changes enhance the transparency of the permitting process by extending individualized notice to adjacent landowners in the Buffer Zone and will result in permitting decisions that are better informed and more protective of public health, safety, and welfare.

RULE 306 (CONSULTATION)

Basis: § 34-60-106(1)(f), § 34-60-106(11)(a)(II) and § 34-60-106(14), C.R.S.

Purpose: New Rule 306.e requires operators to meet upon request with Building Unit owners within the Exception Zone (500 feet) and to specifically confer regarding the details of the proposed operation, such as duration of the operation and reclamation standards, as well as any related mitigation measures. New Rule 306.e. also requires operators to meet upon request with Building Unit owners within the Buffer Zone (1,000 feet). The Commission Staff believes providing more information to potentially affected individuals about the nature and extent of proposed operations will reduce anxiety and lead to a better understanding of potential impacts and measures that will be implemented to minimize those impacts. Numerous, non-substantive revisions were made to Rule 306.

600-SERIES

The following Rules were amended or renumbered:
RULE 602 (GENERAL)

Basis: § 34-60-106(1)(f), § 34-60-106(11)(a)(II) and § 34-60-106(14), C.R.S.

Purpose: A clarifying revision has been made to Rule 602.d. to indicate that previously plugged and abandoned wells are not considered "existing wells".

RULE 603 (STATEWIDE LOCATION REQUIREMENTS FOR OIL AND GAS FACILITIES, AND DRILLING, AND WELL SERVICING OPERATIONS)

Basis: § 34-60-106(1)(f), § 34-60-106(11)(a)(II) and § 34-60-106(14), C.R.S.

Purpose: Substantial additions and revisions were made to Rule 603. Under the Setback Rules, the statewide minimum setback to buildings, roads and major above ground utilities is changed from the greater of 150 feet or 1.5 times the height of the derrick, to 200 feet. This change eliminates confusing language in favor of a single, defined distance. Setbacks from Building Units, i.e., structures intended for human occupancy, and Designated Outside Activity Areas are subject to Rule 604, which defines certain "Designated Zones," and requires heightened mitigation measures be applied to Oil and Gas Facilities within the Designated Zones. Conforming changes were made to existing Rules 603.b. though 603.e.(1)-(17).

RULE 604 (LOCATION REQUIREMENTS FOR OIL AND GAS FACILITIES, DRILLING AND WELL SERVICING OPERATIONS IN DESIGNATED ZONES)

Basis: Basis: § 34-60-106(1)(f), § 34-60-106(11)(a)(II) and § 34-60-106(14), C.R.S.

Purpose: The primary substantive changes arising out of this rule making are reflected in Rule 604.a., which defines specific Designated Zones, and Rule 604.c., which defines various rights and obligations associated with each designation. The Designated Zones include an "Exception Zone," a "Buffer Zone," a "High Occupancy Building Unit Zone," and a "Designated Outside Activity Area Zone." Oil and Gas Facilities proposed to be located within one of these Zones are subject to heightened mitigation measures intended to eliminate, minimize, or mitigate impacts resulting from oil and gas development in Colorado, including odors, noise, dust, and lighting impacts, affecting Building Unit owners or occupants, as well as the general public. The Commission determined heightened mitigation measures are necessary to protect the public welfare when new Oil and Gas Facilities are located within the Designated Zones.

Mitigation measures include requiring noise, dust and light abatement, limiting pits to fresh water only, closed loop drilling, and berm and liner requirements. Additionally, safety measures previously required for high density areas under existing Rule 603.e.(1)-(17) have been relocated to Rule 604 and may now be required in all Designated Zones.

The Commission may approve new Oil and Gas Locations within the Exception Zone pursuant to a Comprehensive Drilling Plan (CDP) under Rule 216. The Commission determined CDPs offer substantial potential benefits related to planning for infrastructure and surface uses associated with multi-well horizontal drilling programs, and for coordinating planning between local governments, and COGCC.

RULE 605 (OIL AND GAS FACILITIES)

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: Amended Rule 605 was previously numbered Rule 604 and has been reorganized for easier readability

800-SERIES

The following Rules were amended:

RULE 802 (NOISE ABATEMENT)

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: Minor modifications to Rule 802 were made to denote that the Director, and not the Commission, in consultation with the applicable LGD, if any, shall assess the type of land use surrounding the oil and gas location and shall assign the appropriate designation to reflect the applicable noise limitations.

RULE 803 (LIGHTING)

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: Lighting abatement requirements under Rule 803 were extended from 700 feet to 1,000 feet in order to further reduce nuisance lighting affecting nearby public roads and Building Units.

RULE 804 (VISUAL IMPACT MITIGATION)

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: Minor editing has been made to modify Rule 804 deleting an obsolete regulatory deadline arising out of the Commission's comprehensive 2008 rule making.

RULE 805 (ODORS AND DUST)

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: Rule 805.b.(2) was changed to require statewide controls on fugitive emissions from production equipment and operations. This requirement previously applied only to three Western Slope counties. Additionally, the setback requirement was modified to meet the Designated Zone setbacks provided in Rule 604.a. Minor modifications were made to Rule 805 to add clarity to the requirements.

Rule 805.c., Fugitive Dust, was modified to include the control of silica dust during hydraulic fracturing operations.

DATE FILED: March 16, 2016 2:53 PM

Exhibit H

Colorado Secretary of State
Elections Division
1700 Broadway, Ste 270
Denver, CO 80290
Ph: (303) 894-2200 x 6383
Fax: (303) 869-4861
www.sos.state.co.us

COMMITTEE REGISTRATION FORM

(C.R.S. 1-45-108)

Committee Name:	YES FOR HEALTH AND SAFETY OVER FRACKING
Registration Date:	01/22/2016
Type:	ISSUE COMMITTEE
Physical Address:	1790 30TH ST, #280 BOULDER CO 80301
Mailing Address:	PO BOX 18872 BOULDER CO 80308
Phone Number:	(575) 616-2577
Alternate Phone:	(303) 530-7107
FAX Number:	
Web Address:	
Jurisdiction:	STATEWIDE
Purpose:	TO SUPPORT BALLOT MEASURES THAT ESTABLISH LOCAL CONTROL OF OIL AND GAS DEVELOPMENT, MANDATORY SETBACKS FROM OIL AND GAS DEVELOPMENT AND OIL AND GAS WELLS, THE RIGHT TO A HEALTHY ENVIRONMENT, AND A BAN ON HYDRAULIC FRACTURING IN THE COLORADO CONSTITUTION.
Party:	
Election Year:	
Office:	
District:	

Financial Institution

Institution Name:	1STBANK
Institution Address:	6500 LOOKOUT ROAD BOULDER CO 80301

Registered Agent		**Designated Filing Agent**	
Agent Name:	OLSON, TRICIA	**Agent Name:**	
Phone Number:	(303) 530-7107	**Phone Number:**	
Alternate Phone:		**Alternate Phone:**	
Agent Email:	OLYNMAWR@MSN.COM	**Agent Email:**	
Alternate Email1:		**Alternate Email1:**	
Alternate Email2:		**Alternate Email2:**	

DATE FILED: March 16, 2016 2:52 PM

Exhibit G

RECEIVED
JAN 08 2016
S. WARD
1:58 P.M.
Colorado Secretary of State

Clean
Initiative 2015-2016 #62

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

SECTION 1. In the constitution of the state of Colorado, **add** article XXX as follows:

ARTICLE XXX

Ban on Hydraulic Fracturing

Section 1. Purposes and findings. THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE:

(a) THAT OIL AND GAS DEVELOPMENT USING HYDRAULIC FRACTURING HAS DETRIMENTAL IMPACTS ON PUBLIC HEALTH, SAFETY, WELFARE, AND THE ENVIRONMENT;

(b) THAT THE PROTECTION OF PUBLIC HEALTH, SAFETY, WELFARE, AND THE ENVIRONMENT HAS PRIORITY OVER THE RIGHTS OF OIL AND GAS DEVELOPMENT; AND

(c) THAT TO SAFEGUARD AND DEFEND PUBLIC HEALTH, SAFETY, WELFARE, AND THE ENVIRONMENT, THE PEOPLE DESIRE TO PROHIBIT THE USE OF HYDRAULIC FRACTURING IN OIL AND GAS DEVELOPMENT WITHIN THE GEOGRAPHIC BOUNDARIES OF THE STATE OF COLORADO, EXCLUDING FEDERAL LAND AND INDIAN RESERVATIONS. SUCH PROHIBITION IS DEEMED NECESSARY TO THEIR SAFETY AND HAPPINESS AND WILL NOT BE REPUGNANT TO THE CONSTITUTION OF THE UNITED STATES.

Section 2. Definitions. FOR PURPOSES OF THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ENVIRONMENT" INCLUDES AIR, WATER, LAND, AND ECOLOGICAL SYSTEMS.

(2) "HYDRAULIC FRACTURING" MEANS THE WELL STIMULATION PROCESS USED TO EXTRACT DEPOSITS OF OIL, GAS, AND OTHER HYDROCARBONS THROUGH THE INJECTION OF WATER, PROPPANT, AND CHEMICALS UNDER HIGH PRESSURE INTO A GEOLOGIC FORMATION.

(3) "OIL AND GAS DEVELOPMENT" MEANS EXPLORATION FOR AND PRODUCTION AND PROCESSING OF OIL, GAS, OTHER GASEOUS AND LIQUID HYDROCARBONS, AS WELL AS THE TREATMENT AND DISPOSAL OF WASTE ASSOCIATED WITH SUCH EXPLORATION AND PRODUCTION.

Section 3. Prohibition of hydraulic fracturing. THE USE OF HYDRAULIC FRACTURING IS PROHIBITED IN OIL AND GAS DEVELOPMENT IN ALL LANDS WITHIN COLORADO, EXCLUDING FEDERAL LAND AND INDIAN RESERVATIONS.

Section 4. Not a taking. THE PROHIBITION OF HYDRAULIC FRACTURING IS NOT A TAKING OF PRIVATE PROPERTY AND DOES NOT REQUIRE THE PAYMENT OF COMPENSATION PURSUANT TO SECTIONS 14 AND 15 OF ARTICLE II OF THE COLORADO CONSTITUTION.

Section 5. Enforcement and damages. ANY PERSON MAY ENFORCE THIS ARTICLE THROUGH AN ACTION BROUGHT IN A COURT OF COMPETENT JURISDICTION. SUCH PERSON SHALL HAVE THE RIGHT TO SEEK DECLARATORY RELIEF, EQUITABLE RELIEF, INCLUDING WITHOUT LIMITATION, INJUNCTIVE RELIEF, AND DAMAGES. THE PLAINTIFFS IN SUCH ACTION SHALL BE

ENTITLED TO RECOVER ALL REASONABLE COSTS OF LITIGATION, INCLUDING WITHOUT LIMITATION, ATTORNEY FEES AND COSTS. UPON DETERMINATION THAT A VIOLATION OF THIS ARTICLE HAS OCCURRED, PENALTIES MAY BE ASSESSED BY THE COURT OR JURY TO BE PAID INTO THE REGISTRY OF THE PRESIDING COURT AND DISTRIBUTED BY SUCH COURT TO THE LOCAL GOVERNMENT WHERE THE VIOLATION OCCURRED.

Section 6. Self-executing - severability - conflicting provisions. ALL PROVISIONS OF THIS ARTICLE ARE SELF-EXECUTING, ARE SEVERABLE, AND SUPERSEDE CONFLICTING STATE AND LOCAL LAWS AND REGULATIONS. LAWS AND REGULATIONS MAY BE ENACTED TO FACILITATE THE OPERATION OF THIS ARTICLE, BUT IN NO WAY LIMITING OR RESTRICTING THE PROVISIONS OF THIS ARTICLE.

Mike Mauer, Director
Legislative Council Staff

Colorado Legislative Council
200 East Colfax Avenue Suite 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
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Dan L. Cartin, Director
Office of Legislative Legal Services

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200 East Colfax Avenue Suite 091
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MEMORANDUM

TO: Bruce Mason, Karen Dike, and Martha Tierney

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: December 30, 2015

SUBJECT: Proposed initiative measure 2015-2016 #62, concerning a prohibition on the use of hydraulic fracturing

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment to the **Colorado constitution** appear to be:

1. To prohibit hydraulic fracturing on all Colorado lands, except federal lands and Indian reservations;