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Supreme Court, State of Colorado 2 East 14th Avenue Denver, Colorado 80203	
Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Setting Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiatives 2013–2014 #85, #86, #87, and #88 (Unofficially Captioned "Oil and Gas Operations") **Petitioners/Cross-Respondents:** Mizraim Cordero and Scott Prestidge; **v.** **Respondents/Cross-Petitioners:** Caitlin Leahy and Gregory Diamond; **and** **Ballot Title Setting Board:** Suzanne Staiert, Daniel Domenico, and Jason Gelender.	▲ **Court Use Only** ▲
Attorneys for Petitioners: Sarah M. Clark, #39367 Michael F. Feeley, #12266 Brownstein Hyatt Farber Schreck LLP 410 Seventeenth Street, Suite 2200 Denver, Colorado 80202 303.223.1100 tel 303.223.1111 fax sclark@bhfs.com, mfeeley@bhfs.com	**Case Nos.:** 14SA116 (Initiative #85) 14SA119 (Initiative #86) 14SA122 (Initiative #87) 14SA125 (Initiative #88)
Consolidated Answer Brief of Petitioners/Cross-Respondents Concerning Proposed Initiatives 2013–2014 #85, #86, #87, and #88 (Unofficially Captioned "Oil and Gas Operations")	

Certificate of Compliance

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

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CONSTITUTIONAL PROVISIONS

Registered electors Mizraim Cordero and Scott Prestidge ("Petitioners") respectfully submit their consolidated answer brief in this original proceeding that seeks review of the actions of the Ballot Title Setting Board ("Title Board") concerning the Proposed Initiatives 2013–2014 #85, #86, #87, and #88 ("Initiatives #85–#88") filed by Caitlin Leahy and Gregory Diamond ("Proponents"). The arguments set forth in Petitioners' Opening Brief are incorporated here.

I. Summary of Argument

First, on *de novo* review, the Title Board's determination the "not a taking" provision contained in Initiatives #85–#87 is not a surreptitious second subject should be reversed. Second, the Title Board's (1) omission of language alerting voters that takings claims will remain viable notwithstanding the Initiatives' "not a taking" provision, (2) exclusion of the Initiatives' "Colorado's" possessive language, (3) use of the catch phrase "statewide setback," and (4) disregard for section 1-40-106(3)(b)'s requirement that titles not conflict render the Initiatives' titles improper and require remand. Last, the Court should affirm the Title Board's decision to remove the catch phrase "including those using hydraulic fracturing" from the titles.

II. Argument

A. The Title Board correctly determined that the term "hydraulic fracturing" is politically charged and polarizing and should not be included in the titles set for Initiatives #85–#88.

The Title Board extensively debated whether to modify the phrase "any new oil and gas well" with the phrase "including those using hydraulic fracturing" in the Initiatives' titles. At the April 3 hearing, Board Member Gelender objected to the "including those using hydraulic fracturing" language as being superfluous given that the title's use of "any new oil and gas well" is, by definition, inclusive of wells that use hydraulic fracturing as a production technique. Exhibit C, 23:1–6.[1] Although the Board did not vote in Board Member Gelender's favor at the April 3 hearing and initially included the hydraulic fracturing language, the language was removed from the titles at the April 16 rehearing. There, Proponents' counsel, Ed Ramey, pressed the Board to retain the hydraulic fracturing language on grounds that the language of the titles should mirror that of the Initiatives, which impose the proposed prohibitions on "all new oil and gas wells requiring a state or local permit, including those using hydraulic fracturing." Exhibit B, Initiatives #85–#88, § 2. Weighing these arguments against Board Member Gelender's earlier point that the hydraulic fracturing language is

[1] Exhibits A–D are attached to Petitioners' consolidated opening brief.

unnecessary, the Board grew skeptical of Proponents' stated motives in using the language in their Initiatives:

> **Mr. Ramey:** I would say this. The language of the measure itself, forget about the title for a moment, the language of the measure calls out "hydraulic fracturing." . . . It was important enough to the Proponents to have it in the language and to somehow . . . not inform the public what this is about, you know, I think sort of trumps the catch phrase concern up to a point.
>
> . . .
>
> **Board Chair Staiert:** But even if you hadn't said "including hydraulic fracturing" that would be true anyway, wouldn't it? I mean, it is, right? Even if the measure had just stopped and said "oil and gas" that would have –
>
> **Board Member Gelender:** I think the point is because of the, you know, perspective we have on the term "hydraulic fracturing"—that's exactly why it was put in the initiative. I mean, it could have been a laundry list of different drilling techniques that are affected by this initiative including, you know, timing and hours and, you know, types of drilling materials and all kinds of different things but what was done was said we're dealing with oil and gas operations including hydraulic fracturing and that's specifically done to draw attention to it. That is by definition a catch phrase and it's done so without educating the voters as to the totality of the initiative and the effect on all kinds of different aspects of drilling . . . so I do think it's important to remove that catch phrase just because it's not helpful for understanding the total.

Exhibit D, 22:15–23:6.

Board Member Domenico agreed, echoing his earlier reservations about "hydraulic fracturing" being a catch phrase and "shorthand to help the public debate which is not really what we're [the Title Board] supposed to be doing here,"

Exhibit C, 24:22–25:6, and concluding that removing the hydraulic fracturing language from the titles properly achieves the statutory requirement to communicate the meaning of the Initiatives in a way that avoids misleading the voters:

> **Board Member Domenico:** It [the term "hydraulic fracturing"] seems to me to be, if not a catch phrase, at least potentially misleading and certainly not truly immaterial [sic] in the sense that . . . the measure does the same thing whether that's in there or not. The reason I find it potentially misleading is . . . that this is what's in people's minds, this is an important thing that's going on. It's a discussion that's already taking place. And since I don't think it's material in the sense that I don't think it changes that actual effect of the measure, I'm inclined to let the public debate raise the fact that this involves hydraulic fracturing rather than our title.

Exhibit D, 23:16–24:14.

As Board Member Domenico explained, the Title Board's decisions with respect to the existence of a catch phrase are not determined in a vacuum, but rather "in the context of contemporary political debate." *In re Title, Ballot Title, and Submission Clause for 1999–2000 No. 258(A)*, 4 P.3d 1094, 1100 (Colo. 2000). For example, in *Say v. Baker*, 322 P.2d 317, 320 (Colo. 1958), the Court upheld the Title Board's decision to exclude the phrase "freedom to work" from the title of an initiative that sought to prohibit union membership as a condition of employment, at a time during which "political battles over unionized labor were a topic of national debate," *In re Title, Ballot Title, and Submission Clause for 2009–*

2010 No. 45, 234 P.3d 642, 653 (Colo. 2010) (C.J. Mullarkey, concurring in part and dissenting in part). Similarly here, hydraulic fracturing is the subject of local news nearly every day. Just last week, Governor Hickenlooper described his attempt to broker a legislative compromise concerning oil and gas development as "one of the most difficult negotiations he's ever been involved with" and analogized the parties as "two armies—on either side of the border—and they're both poised for battle."[2]

The Title Board "act[s] wisely in refusing to use words in the title which would tend to color the merit of the proposal on one side or the other." *Say*, 322 P.2d at 320. The Title Board's task with respect to catch phrases is "to recognize terms that provoke political emotion and impede voter understanding, as opposed to those which are merely descriptive of the proposal." *In re Title, Ballot Title, Submission Clause for 2009–2010 No. 258(A)*, 4 P.3d 1094, 1100 (Colo. 2000). Here, Proponents suggest that the Title Board, "in a rush to avoid the suggestion of controversy," removed the hydraulic fracturing language in a way that "gut [the] title of its essential informative value." Proponents Op. Br., p. 13. To the contrary, the Title Board carefully examined the language of the Initiatives

[2] Megan Verlee, *Governor Hickenlooper Still Has Hope for Fracking Compromise*, Colorado Public Radio, May 29, 2014, at http://www.cpr.org/news/story/governor-hickenlooper-still-has-hope-fracking-compromise (last visited June 2, 2014).

and found the phrase "all new oil and gas wells" to be the descriptive language necessary to the titles. The Board further found the phrase "including those using hydraulic fracturing" to provoke political emotion, serving no other purpose than to impede, or at least to confuse, voter understanding of the Initiatives. As such, the Title Board's decision to remove the hydraulic fracturing language was proper and should be affirmed.

B. The "not a taking" provision contained in Initiatives #85–#87 is a surreptitious second subject.

1. Whether a proposed initiative complies with the Colorado Constitution's single-subject requirement is a question of law that must be reviewed *de novo*.

As a preliminary matter, Petitioners disagree with the standard of review set forth by Proponents and the Title Board as to the Court's single-subject analysis. In their statement of the standard of review, Proponents point to the constitutional provision that requires a proposed initiative to contain only a single subject but offer no guidance concerning what amount of deference, if any, is afforded to the Title Board's legal determination of whether a proposed initiative contains a single subject. Proponents Op. Br., p. 6. In its statement, the Title Board recites a "considerable discretion" standard of review that applies to the Court's analysis of whether the language of a title set by the Title Board after single subject has been determined clearly expresses the single subject of the proposed initiative. Title

Board Op. Br., pp. 10–12. This standard does not apply to the Court's review of whether the single-subject threshold was met in the first instance or, in connection, whether the Board should have set title at all.

For example, in *In re Public Rights in Waters II*, 898 P.2d 1076 (Colo. 1995), the Court was asked to decide whether the newly passed single-subject requirement prohibited the Title Board from setting the titles and—at that time—summary on a proposed initiative concerning water, *id*. at 1077–78. Construing article V, section 1(5.5) of the Colorado constitution and section 1-40-106.5, C.R.S. (2013), the Court looked past the Title Board's determination on single subject and applied existing case law concerning the single-subject requirement for bills to the particular language of the initiative. *Id.* at 1078–80. Although the Court did not expressly state its review was *de novo*, it gave the Title Board's arguments on single subject the same weight as the arguments made by the other parties to the case and substituted its own judgment for that of the Title Board as if the question were being considered for the first time. *Id.*

The Court's more recent precedent continues to parse the standard of review to be used by the Court when reviewing the actions of the Title Board in the exercise of its drafting authority from that standard used when reviewing the Title Board's determination on single subject. *See, e.g., Kemper v. Hamilton (In re*

Ballot Title 2007–2008 #17), 172 P.3d 871, 873–74 (Colo. 2007). Analysis of whether a propose initiative contains a single subject is a legal question that necessarily involves interpretation of article V, section 1(5.5) and section 1-40-106.5, together with an examination of the language of the proposed initiative sufficient to enable review of the Title Board's determination. Therefore, whether a proposed initiative complies with the Colorado constitution's single-subject requirement is not a matter of "considerable discretion" as the Title Board suggests, but rather is a question of law that must be reviewed on appeal *de novo*.

2. The "not a taking" provision would spring surprise on voters.

Both Proponents and the Title Board ignore the surprise that the "not a taking" provision in Initiatives #85–#87 would spring on voters. Moreover, the sole case relied on by the Title Board—*In re Title, Ballot Title, Submission Clause, and Summary for 1997–1998 No. 112*, 962 P.2d 255 (Colo. 1998) (styled by the Title Board as *Smith v. Bogan*)—is a Court *per curiam* order that affirmed the Title Board without opinion and is thus inapposite, *id.* at 256. Notwithstanding the *per curiam* order's lack of authority over this or any case other than the one it decided, that initiative is distinguishable from the Initiatives here because it does not appear the initiative there threatened to surprise voters by eliminating a cornerstone constitutional right, such as the right to property. *See id.*

An initiative improperly combines two subjects when there is a risk that voters will be deceived into inadvertently adopting something they do not support in the process of voting for something they do support. *See, e.g., In re TABOR*, 900 P.2d 121, 125 (Colo. 1995) (rejecting argument that tax credit and ballot title procedural requirements united by common characteristic of "government revenue changes"); *In re Public Rights in Waters II*, 898 P.2d at 1080 (rejecting argument that water conservancy and water conservation district elections provisions and "public trust" doctrine provision united by common characteristics of "water").

Overriding the current prohibition on the location of oil and gas wells is significantly different than stripping mineral rights owners of their constitutionally guaranteed right to compensation. This concern was raised by both Board Member Gelender and Board Member Domenico during the April 3 hearing:

> **Board Member Gelender:** I would wonder if someone voting on this would have a reasonable expectation that something like that could happen . . . .

Exhibit C, 6:16–24.

> **Board Member Domenico:** I can see Mr. Gelender's point certainly. It could surprise someone who might say, well, you know, look, I'd like to impose these regulations but do so with the understanding that kind of the normal rules about if it takes someone's property that, you know, they should be entitled to just compensation . . . .

Exhibit C, 7:18–24.

Adding to the confusion caused by the "not a takings" provision, Proponents' attorney assured the Title Board at the April 3 hearing that the "not a taking" provision does not bar takings claims by mineral rights owners:

> **Mr. Ramey:** Let's say that . . . somebody felt at some level that a taking to which they were entitled to just compensation existed, they would certainly have the federal constitutional right to pursue that.

Exhibit C, 6:8–12.

Therefore, in a similarly surreptitious way, the "not a taking" provision could also mislead to voters into overriding the state's current prohibition on the location of oil and gas wells with the prohibitions proposed by the Initiatives based on a mistaken understanding that the "not a taking" provision insulates the government from potential litigation and financial liability by barring takings claims when Proponents state that such claims are not barred at all.[3] In both these ways, the "not a taking" provision improperly introduces a second subject into the initiatives and the Title Board's determination on this matter should be reversed.

[3] The confusion caused by the "not a taking" provision with respect to clear title is discussed in Section C.1. below.

C. The Initiatives' titles improperly omit key provisions, fail to explain incongruous elements, use a catch phrase, and improperly conflict with titles previously set.[4]

1. The titles fail to inform voters that federal takings claims are unaffected by the Initiatives' "not a taking" provision.

Even if the Court determines that the "not a taking" provision contained in Initiatives #85–#87 is not an impermissibly second subject as discussed in Section B.2 above, the Title Board's failure to inform voters that federal takings claims are unaffected by the "not a taking" provision is an omission that is fatal to the titles.[5] *See In re Title, Ballot Title, Submission Clause for 2009–2010 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."). The danger is that the "not a taking" provision could mislead to voters into supporting the Initiatives based on a mistaken understanding that the "not a taking" provision bars all takings claims and therefore insulates the

[4] Petitioners concur with the standard of review set forth by Proponents and Petitioners with respect to the deference the Court grans to the Title Board's determinations on title. *See* Petitioners Op. Br., p. 10.

[5] Proponents suggest that this issue was not properly preserved by Petitioners in the proceedings before the Title Board. Proponents Op. Br., p. 10. However, as the April 16 rehearing transcript makes clear, this issue was raised, discussed, and properly preserved by Petitioners. Exhibit D, 32:21–33:3.

government from potential litigation and financial liability with respect to such claims.

Although the language of the titles accurately reflects the language of the Initiatives, which bars state takings claims, the titles fail to make explicit that federal takings claims remain viable. This is critical to voter understanding of the Initiatives because an average voter is likely unaware of the particulars of eminent domain law and that the Colorado and U.S. Constitutions provide separate claims for relief that may be pursued individually or together.

Titles need not refer to every possible "interplay with existing state and federal laws." *In re Title, Ballot Title, Submission Clause for 1999–2000 No. 255*, 4 P.3d 485, 498 (Colo. 2000). However, where, as here, a distinction between federal and state law is easily explained and would protect against voter confusion, that distinction should appear in the title. Claiming that the Court would be required to "engag[e] in an interpretive analysis of the legal implications of the [Initiatives] under federal law," Proponents overstate what the titles in this case should include. Proponents Op. Br., p. 10. Alerting voters that federal takings claims remain does not require the Court to interpret the substance of the Initiatives and is consistent with Proponents' intent. At the April 3 hearing, Proponents'

attorney stated that it would be a disservice to suggest to voters that the Initiatives affect federal takings claims:

> **Mr. Ramey:** [T]o suggest that we're—to allow a suggestion to exist through a title that we're amending more than we can amend [the U.S. Constitution], I think is a disservice . . . .

Exhibit C, 13:7–10.

Further, Proponents' attorney explained that the purpose of the "not a taking" provision is not to bar all takings claims:

> **Mr. Ramey:** [L]et's say . . . somebody felt at some level that a taking to which they were entitled to just compensation existed, they would certainly have the federal constitutional right to pursue that.

Exhibit C, 6:8–12.

All that is necessary for the titles to put voters on notice of the continued viability of federal takings claims is a qualifying phrase "but only" so the relevant portion of the titles would read: "An amendment to the Colorado constitution concerning a statewide setback requirement . . . establishing that the statewide setback requirement is not a taking of private property requiring compensation but only under the Colorado constitution."[6] Exhibit A, Initiatives #85–#87 (proposed additional language underlined). This additional language flags, in a concise way, that there might be other legal claims that remain unaffected by the "not a taking"

[6] For the reasons set forth in Section C.3, the titles should also be returned to the Title Board to remove the catch phrase "statewide setback."

provision. Presumably, the issue would then be further explained for voters in the Blue Book.

It is the job of the Title Board to ensure that its titles do not mislead voters as to the substance of the initiatives before them. Here, because the titles could mislead voters into believing that the Initiatives wholly resolve potential eminent domain litigation and financial liability by barring such claims, they should be returned to the Title Board for correction.

2. The titles fail to alert voters that the Initiatives appear to apply exclusively to oil and gas resources owned by the state.

Proponents contend that the Initiatives do not apply exclusively to oil and gas resources owned by the state, even though the Initiatives expressly apply to "exploration for and production of Colorado's oil, gas, and other gaseous and liquid hydrocarbons, and carbon dioxide." *Compare* Proponents Op. Br., pp. 8–9 *with* Exhibit 2, Initiatives #85–#88, § 2. They maintain that their intent is evidenced by the "not a taking" provision contained in Initiatives #85–#87 because the state cannot take its own property. Proponents Op. Br., pp. 8–9. However, contrary to Proponents' argument, and despite the fact that Initiative #88 does not contain a "not a taking" provision, there are more sticks in a bundle of property rights than simple fee ownership, including leasehold interests, royalty interests,

and vested rights held by permit holders. The State Land Board operates its oil and gas resources by competitively and publically auctioning to private individuals and companies five-year leases for $2.50 per acre with a 1/6 royalty owed back to the state on all production.[7] Because all such property rights, and not just the state's rights, would be affected by the Initiatives' proposed prohibitions, Proponents rationale for their intent cannot stand.

Both Proponents and Title Board maintain that the Court should ignore Petitioners' concern regarding the "Colorado's" possessive language on grounds that neither the Title Board nor the Court should engage in construing the language of the Initiatives. Proponents Op. Br., pp. 8–9 & Title Board Op. Br., pp. 16–18. However, in the same way that it is unnecessary to engage in interpretation in order to amend the Initiatives' titles to ensure that voters are on notice that the Initiatives' "not a taking" provision bars only state takings claims,[8] alerting voters of the Initiatives' "Colorado's" possessive language requires no interpretation or explanation. Indeed, if amended to include "Colorado's" possessive language, the Initiatives' titles would follow the principle that Proponents have advocated with

[7] Colorado State Land Board, Resource Extraction Frequently Asked Questions, http://trustlands.state.co.us/Sections/Minerals/Pages/FAQs.aspx (last visited June 2, 2014).

[8] *See* Section C.1 above.

respect to use of the catch phrase "hydraulic fracturing"—that where there is ambiguity, the language of the Initiatives should be used in the titles. Proponents Op. Br., pp. 12–13.[9]

At the very least, the Initiatives' use of the "Colorado's" possessive language combined with the existence of more than four million acres of mineral rights owned by the State of Colorado create ambiguity as to whether the Initiatives apply exclusively to state-owned resources or to all resources within the state. If nothing else, the titles should alert voters to this ambiguous language, which, as with the federal takings claims issue, can then be further explained in the analysis contained in the Blue Book. *See In re Title, Ballot Title, Submission Clause, and Summary for 1999–2000 No. 104*, 987 P.2d 249, 259–60 (Colo. 1999) (holding that because the "not to exceed 5%" language was "unclear when compared to the language used in other Colorado recall or removal statutes," the Title Board improperly created ambiguity and confusion in the titles and summary by not explaining that the initiative set both an upper and lower limit on the number of signatures that needed to be collected).

[9] *See* Section A above for a full discussion of why the Title Board's decision to remove the catch phrase "including those using hydraulic fracturing" should be affirmed.

3. The titles improperly use the catch phrase "statewide setback," which can easily form the basis of a campaign slogan.

"A 'catch phrase' consists of words which could form the basis of a slogan for use by those who expect to carry out a campaign for or against an initiated constitutional amendment." *In re Governmental Business*, 875 P.2d 871, 876 (Colo. 1994) (holding that "open government" and "consumer protection" were impermissible catch phrases). According to well-known American linguist and presidential speechwriter William Safire, a slogan is a "brief message that crystalizes an idea [or] defines an issue." William Safire, *Safire's Political Dictionary* 666 (2008). "Good slogans have rhyme, rhythm, or alliteration to make them memorable, . . . and [i]t is the nature of slogans to appeal to emotions, slipping past rational argument." *Id.* Several winning presidential slogans have used alliteration: "Tippecanoe and Tyler Too" (William Harrison, 1840); "Fifty-Four Forty or Fight" (James Polk, 1844); and "Keep Cool and Keep Coolidge" (Calvin Coolidge, 1924).

In a similar way, the titles' use of "statewide setback" makes it easy to craft a memorable slogan—"Say Yes to a Statewide Setback"—with the exact language voters will encounter on the ballot. Quoting Francis Bacon, Safire warns that "[m]en suppose that reason has command over their words, still it happens that

words in return exercise their authority on reason." *Id.* Perhaps Petitioners and the Title Board are correct that "setback" is a familiar enough term because of municipal zoning ordinances, *see* Proponents Op. Br., pp. 9–10 & Title Board Op. Br., pp. 19–20, but when combined with the term "statewide" the word is impermissibly transformed into a phrase that can form the basis of a campaign slogan and that should have been carefully avoided by the Title Board.

Irrespective of whether "setback" is a familiar enough term for voters to understand, it is not sufficiently descriptive of the aim of the Initiatives, which is to prohibit the location of new oil and gas wells within a certain radius of occupied structures. Proponents contend that "nothing is 'prohibited'" under the Initiatives, when in fact the way a setback functions is by prohibiting something within a certain area. *See* Proponents Op. Br., p. 9. Currently, oil and gas wells in Colorado are prohibited from being located within 500 feet of any building. Proponents' Initiatives seek to override the current prohibition with 1,500-foot, 2,000-foot, and half-mile prohibitions. The titles should reflect this purpose with plain and understandable language by using the term "prohibition" instead of "setback."

4. The Title Board has disregarded section 1-40-106(3)(b)'s requirement that titles shall not conflict.

The Court has never interpreted whether the requirement set forth in section 1-40-106(3)(b), C.R.S. (2013)—"[b]allot titles . . . shall not conflict with those selected for any petition previously filed for the same election"—applies to a "packet" of similar initiatives, as Proponents have described the Initiatives in this case.[10] Exhibit C, 3:2–13. Proponents concede that Initiatives #85–#88 are "alternative, and conflicting," but argue that there is no risk that more than one of the Initiatives will appear on the ballot because they promised as much to the Title Board. Proponents Op. Br., p. 11. According to the Title Board, it properly sets conflicting titles on similar initiatives as long as it receives assurances that the proponents will not seek to gather signatures on more than one of the initiatives. Title Board Op. Br., p. 20. This approach is based not on the statutory language, but rather on the Title Board's belief in the "built-in incentives in the system that proponents would not want to incur the additional cost of obtaining signatures for

[10] In *In re Rights of Public to Uninterrupted Service by Public Employees*, 613 P.2d 867 (Colo. 1980), the petitioners raised the issue of whether the titles set on two similar initiatives brought by the same proponents conflicted in violation of an earlier version of the statute, *id.* at 870. The Court, however, refused to consider the claim because the first initiative had been abandoned by the proponents. *Id.* In this case, all four of the Initiatives remain alive and the claim thus is ripe for review.

multiple similar measures, [nor] risk possible public confusion by having similar measures appear on the ballot." *Id*. at pp. 21–22.

The Title Board's current practice violates section 1-40-106(3)(b)'s requirement and is unfair to both Proponents and Petitioners. Proponents are now in the position of arguing, on the one hand, that they will honor their promise to the Title Board to go forward with only one of the initiatives and, on the other, that the initiatives are sufficiently distinct that "none of the [t]itles read the same." Proponents Op. Br., pp. 11–12. For their part, Petitioners are placed in the disadvantaged position of playing a guessing game as to which initiative Proponents will choose for signature gathering and when their election will be made. They are also placed in the position of having to bear the attendant expenditure of resources and time fighting three Initiatives that Proponents will not, ultimately, be pursuing for inclusion on the November ballot.

"The legislative intent of article 40 primarily is to make the initiative process fair and impartial." *In re Title, Ballot Title, Submission Clause, and Summary for 1999–2000 Nos. 245(f) and 245(g)*, 1 P.3d 739, 742 (Colo. 2000). Currently, the initiative process as it pertains to whether the titles of similar initiatives conflict with one another is operating on promises and gut feelings, not on the statutory language of article 40. *See* Exhibit C, 2:22–4:7 First, whether two initiatives are

similar enough to trigger the conflicting titles requirement is nothing more than a suggestion by the Title Board Chair at the outset of the hearing without any formal debate or vote by the Board. *See id.* at 2:22–3:1. This is in contrast to the process the Board uses to determine single subject and to decide title language. Second, the Board's solicitation for assurances that the proponents will only gather signatures as to one initiative likewise occurs at the outset of the hearing, and it is unclear what action the Board would take if a proponent refused to make that promise. *See id.* at 3:23–24. There is nothing in the language of section 1-40-106(3)(b) that authorizes this process, and this Court's guidance is needed to provide clarity.

III. Conclusion and Relief Requested

For the reasons set forth above and in their Opening Brief, Petitioners request that the Court reverse the Title Board's determinations on single subject and, except with respect to the decision to remove language related to hydraulic fracturing, also reverse the Title Board's decisions on the issues raised regarding title. Petitioners further request that the Court remand the Initiatives to the Title Board with instructions consistent with its opinion.

Respectfully submitted: June 2, 2014.

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Certificate of Service

I hereby certify that on June 2, 2014, a true and correct copy of this **Consolidated Answer Brief of Petitioners/Cross-Respondents Concerning Proposed Initiatives 2013–2014 #85, #86, #87, and #88 (Unofficially Captioned "Oil and Gas Operations")** was filed and served electronically through ICCES upon the following attorneys:

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