

SUPREME COURT OF COLORADO  
2 East 14<sup>th</sup> Avenue  
Denver, CO 80203

DATE FILED: April 23, 2014 3:21 PM

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  
2013-2014 #82 (“Local Control of Oil and  
Gas Development”)

**Petitioners: MIZRAIM S. CORDERO  
AND SCOTT PRESTIDGE**

v.

**Respondents: LAURA  
FRONCKIEWICZ; KELLY GIDDENS;  
AND SUZANNE SPIEGEL**

**and**

**Title Board: SUZANNE STAIERT;  
DANIEL DOMENICO; and SHARON  
EUBANKS**

▲ COURT USE ONLY ▲

Attorneys for Petitioners:

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Hogan Lovells US LLP  
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Case No. \_\_\_\_\_

**PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE  
SETTING BOARD CONCERNING PROPOSED INITIATIVE 2013-  
2014 #82 (“LOCAL CONTROL OF OIL AND GAS DEVELOPMENT”)**

Mizraim S. Cordero and Scott Prestidge (“Petitioners”), registered electors of the State of Colorado, through their undersigned counsel, respectfully petition the Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board (“Title Board”) with respect to the title, ballot title, and submission clause set for Initiative 2013-2014 #82 (“Local Control of Oil and Gas Development”) (hereinafter “Proposed Initiative”).

## **STATEMENT OF THE CASE**

### **A. Procedural History of Proposed Initiative #82**

Laura Fronckiewicz, Kelly Giddens, and Suzanna Spiegel (collectively “Proponents”) are the designated proponents of the Proposed Initiative. The review and comment hearing required by C.R.S. § 1-40-105(1) was conducted by the Offices of Legislative Council and Legislative Legal Services on March 5, 2014. Proponents thereafter substantially revised the Proposed Initiative and submitted that revised version directly to the Secretary of State on March 17, 2014, for purposes of having the Title Board set title. The Secretary of State or his designee is a member of the Title Board.

The Title Board considered and set title for the Proposed Initiative at its April 2, 2014 meeting. On April 9, Petitioners timely filed a Motion for Rehearing pursuant to C.R.S. § 1-40-107(1)(a), alleging that the Board lacked jurisdiction to set title because (1) the version of the Proposed Initiative that was filed with the

Secretary of State was not first submitted to the Offices of Legislative Council and Legislative Legal Services for review and comment, (2) the Proposed Initiative violated the single-subject requirement, and (3) the Proposed Initiative was so vague that a title could not be set that adequately expresses the true purpose of the measure. In the alternative, Petitioners argued that the title was misleading because it failed to describe important aspects of the measure. The Title Board considered Petitioner's Motion at its April 16, 2014 meeting, and denied the Motion except to the extent that the Title Board made changes to the title.

## **B. Jurisdiction**

Petitioners submit this matter to the Colorado Supreme Court for review pursuant to C.R.S. § 1-40-107(2). Petitioners timely filed a Motion for Rehearing with the Title Board pursuant to C.R.S. § 1-40-107(1) and timely filed this Petition for Review within seven days from the date of rehearing as required by C.R.S. § 1-40-107(2). Consistent with the requirements set forth in section 1-40-107(2), Petitioners have attached the following: (1) the original, amended, and final versions of the Proposed Initiative filed by the Proponents; (2) the original ballot title set for this measure; (3) the Petitioners' Motion for Rehearing; and (4) the Title Board's ruling on the Motion. Petitioners respectfully submit that the Title Board erred in denying the Motion and therefore this matter is properly before this Court.

## **GROUND FOR APPEAL**

Proponents failed to submit the final version of the Proposed Initiative to the Offices of Legislative Council and Legislative Legal Services for review and comment or a waiver letter as required by Colo. Const. art. V., § 1(5) and C.R.S. § 1-40-105(2). Further, in violation of Colo. Const. art. V., § 1(5.5) and C.R.S. § 1-40-106.5, the Title Board set title for the Proposed Initiative despite the fact that it contains multiple, distinct and separate purposes that are not dependent upon or connected with each other. Also, the Proposed Initiative is so vague that a title could not be set that adequately expresses the true purpose of the measure. The Title Board therefore lacked jurisdiction to set title. In the alternative, the title and submission clause for the Proposed Initiative are misleading and confusing because they fail to describe important aspects of the measure.

The following is an advisory list of issues which will be fully discussed in Petitioners' brief:

1. Title Board lacked jurisdiction to set title because Proponents failed to submit the final text of the proposed measure to the Offices of Legislative Council and Legislative Legal Services.
  - a. The final text of the Proposed Initiative is so different from the text submitted to the Offices of Legislative Council and Legislative Legal Services that Article V, Section 1(5) of the Colorado constitution

requires the Proponents to submit the Proposed Initiative for review and comment or a waiver letter.

- b. The changes made to the original text of the Proposed Initiative were not in direct response to the questions included in the review and comment memorandum.
2. The Title Board lacked jurisdiction to set title because the Proposed Initiative contains multiple, distinct and not interdependent subjects, which include:
- a. Expanding the authority of local governments to prohibit “oil and gas development”;
  - b. Granting local governments the ability to restrict the “time, place and manner of oil and gas development”;
  - c. Granting local governments the authority to regulate multiple and distinct industries and processes including “all physical or chemical process or procedures used to explore for, extract, process, produce, store or transport petroleum products...”;
  - d. Expanding the authority of local governments to regulate a number of products including “petroleum products, including natural gas, [and] byproducts such as asphalt or waste”;

- e. Deeming that local restrictions and prohibitions of oil and gas development are not in conflict with the state’s interest; and
  - f. Empowering local governments to “protect their people and their communities using the precautionary principle”.
3. The authority granted to local governments under the Proposed Initiative is so vague that the Board cannot set an adequate title pursuant to C.R.S. § 1-40-106(3)(c), for the following reasons:
- a. The definition in Section 2(b) of “oil and gas development” is so expansive and unclear that it could be construed to allow local laws affecting a limitless number of industries, businesses, and products;
  - b. The measure purports to grant authority to local governments “to protect their people and communities using the precautionary principle.” However, the measure does not provide a definition of “precautionary principle”;
  - c. The measure states that local governments may not enact regulations that are less protective of “any interest, including public health..., than any other existing Colorado, federal or concurrent local provision.” The term “interest,” however, is not defined. In addition to “public health, welfare safety or air or water quality,” this term could be construed to include property rights, contractual rights, or

other individual interests. Additionally, the term “concurrent local provision” is also vague and unclear.

4. The title and submission clause for the Proposed Initiative are misleading and confusing because they fail to describe important aspects of the measure, which include:

- a. The grant of local governmental authority to protect people and communities under the precautionary principle; and
- b. The prohibition from enacting “any rule on oil and gas development that less protective of any interest, including public health, welfare, safety, or air or water quality, than any other existing Colorado, federal or concurrent local provision.”

### **PRAYER FOR RELIEF**

Petitioners respectfully request that after consideration of the parties’ briefs, this Court determine that the Title Board lacked jurisdiction to set title and order that title setting be denied. Alternatively, Petitioners request that the Court determine that the title as set is confusing, misleading, and not reflective of the measure’s intent and remand the Proposed Initiative to the Title Board with instructions to redraft the title to accurately and fairly represent the intent of the Proposed Initiative.

Respectfully submitted this 23th day of April, 2014 by:

HOGAN LOVELLS US LLP

s/ *Elizabeth H. Titus*

Chantell Taylor, No. 33059

Elizabeth H. Titus, No. 38070

Hogan Lovells US LLP

1200 Seventeenth Street, Suite 1500

Denver, Colorado 80202

Phone: (303) 899-7300

Fax: (303) 899-7333

**CERTIFICATE OF SERVICE**

I certify that on April 23, 2014, a true and correct copy of the above and foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2013-2014 #82 (“Local Control of Oil and Gas Development”)** via e-mail and U.S. Mail of such filing upon:

Katherine L. Toan, Esq.  
Colorado Environmental Law  
2019 Goss Street  
Boulder, Colorado 80302  
Email: [kate@coloradoenvironmentallaw.com](mailto:kate@coloradoenvironmentallaw.com)  
**Attorneys for Respondents**

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[LeeAnn.Morrill@state.co.us](mailto:LeeAnn.Morrill@state.co.us)  
**Attorneys for the Ballot Title Setting Board**

s/ Helen Hyatt



DATE FILED: April 23, 2014 3:00 PM

# STATE OF COLORADO

DEPARTMENT OF  
STATE

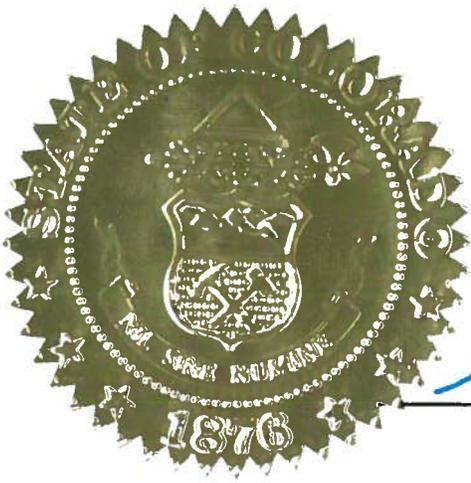
## CERTIFICATE

I, **SCOTT GESSLER**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, motion for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2013-2014 #82 'Local Control of Oil and Gas Development'" .....

.....

..... **IN TESTIMONY WHEREOF** I have unto set my hand .....  
and affixed the Great Seal of the State of Colorado, at the  
City of Denver this 18<sup>th</sup> day of April, 2014.



A handwritten signature in blue ink, which appears to read "Scott Gessler", is written over a horizontal line.

SECRETARY OF STATE

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

Article XVIII of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

**Section 17: Local Control of Oil-and-Gas Development**

**(1) Purpose and findings.**

- (a) THE COLORADO CONSTITUTION CONFERS CERTAIN RIGHTS ON THE CITIZENS OF THE STATE, INCLUDING INALIENABLE RIGHTS UNDER ARTICLE II, SECTION 3.
- (b) LOCAL GOVERNMENTS IN THE STATE OF COLORADO MAY ENACT LOCAL CHARTER AMENDMENTS, LAWS, ORDINANCES AND/OR REGULATIONS INTENDED TO PROTECT THE INALIENABLE RIGHTS OF ITS CITIZENS.

**(2) Definitions.**

- (a) "LOCAL GOVERNMENT" MEANS ANY COUNTY, CITY AND COUNTY, CITY, OR TOWN, WHETHER STATUTORY OR HOME RULE, LOCATED IN THE STATE OF COLORADO.

**(3) Local Control of Oil-and-Gas Development.**

- (a) NOT WITHSTANDING ANY OTHER PROVISION OF LAW, LOCAL GOVERNMENTS IN COLORADO MAY PLACE RESTRICTIONS ON THE TIME, PLACE OR METHOD OF OIL-AND-GAS DEVELOPMENT, INCLUDING BUT NOT LIMITED TO THE USE OF HYDRAULIC FRACTURING, THAT ARE INTENDED TO PROTECT THEIR COMMUNITIES AND CITIZENS.
- (b) NO LOCAL GOVERNMENT MAY ENACT ANY LIMITATIONS, RULES OR REGULATIONS ON OIL-AND-GAS DEVELOPMENT THAT ARE LESS STRINGENT THAN EXISTING STATE AND FEDERAL PROVISIONS.
- (c) ANY SUCH RESTRICTIONS PLACED BY LOCAL GOVERNMENTS ON OIL-AND-GAS DEVELOPMENT ARE DEEMED NOT TO BE IN CONFLICT WITH THE STATE'S INTERESTS.

- (4) **Self-executing, severability, confliction provisions.** ALL PROVISIONS OF THIS SECTION ARE SELF-EXECUTING AND SEVERABLE.

**RECEIVED**

MAR 17 2014

Colorado Secretary of State

SWARD  
Hand Delivered

Initiative #82

Original proposal

2/21/14

To:

Mike Mauer, Director  
Colorado Legislative Council Staff  
200 E Colfax Ave  
Denver, CO, 80203 USA

From:

Principal Proponents

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720-336-9753  
[suzanne.spiegel2@gmail.com](mailto:suzanne.spiegel2@gmail.com)

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

SECTION 1. ~~Article XVIII of the~~ The constitution of the state of Colorado, Article XVIII is amended by the addition of a new section, ~~Section 17, to read~~ as follows:

**Section 17: Local Control of Oil and Gas Development (1) Purpose and findings.** ~~(a) THE COLORADO CONSTITUTION CONFERS CERTAIN RIGHTS ON THE CITIZENS OF THE STATE, INCLUDING INALIENABLE RIGHTS UNDER ARTICLE II, SECTION 3. THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT THE DEVELOPMENT OF OIL AND GAS, INCLUDING THE USE OF HYDRAULIC FRACTURING, MAY IMPACT LOCAL INTERESTS SUCH AS AIR QUALITY, PUBLIC HEALTH, SAFETY, WELFARE, PROPERTY VALUES, AND THE CHARACTER OF OUR COMMUNITIES; THAT THE PUBLIC HAS HISTORICALLY RELIED UPON LOCAL GOVERNMENTS TO REGULATE CERTAIN LOCAL LAND USES AND TO MINIMIZE POTENTIAL CONFLICTS BETWEEN INDUSTRIAL DEVELOPMENT AND THE INTERESTS OF THE LOCAL COMMUNITY; THAT LOCAL GOVERNMENTS ARE ENTITLED TO PROTECT THEIR PEOPLE AND THEIR COMMUNITIES USING THE PRECAUTIONARY PRINCIPLE; THAT TO PROTECT THESE INTERESTS THE PEOPLE DESIRE TO EXPAND THE AUTHORITY OF LOCAL GOVERNMENTS BY VESTING IN THEM THE RIGHT TO IMPOSE LOCAL RESTRICTIONS ON OIL AND GAS DEVELOPMENT WITHOUT FEAR OF STATE PREEMPTION.~~

~~(b) LOCAL GOVERNMENTS IN THE STATE OF COLORADO MAY ENACT LOCAL CHARTER AMENDMENTS, LAWS, ORDINANCES AND/OR REGULATIONS INTENDED TO PROTECT THE INALIENABLE RIGHTS OF ITS CITIZENS. THE PURPOSE OF THIS AMENDMENT IS TO EMPOWER ALL OF COLORADO'S LOCAL GOVERNMENTS TO ADOPT RULES, SUCH AS CHARTER AMENDMENTS, LAWS, ORDINANCES, OR REGULATIONS, TO PROTECT THEIR PUBLIC, THEIR COMMUNITIES, AND THEIR AIR, WATER, AND LAND THROUGH ADDITIONAL LOCAL RESTRICTIONS ON OIL AND GAS DEVELOPMENT, INCLUDING BANS OR MORATORIA ON HYDRAULIC FRACTURING.~~

**(2) Definitions.** ~~(a) "LOCAL GOVERNMENT" MEANS ANY COUNTY, CITY AND COUNTY, CITY, OR TOWN, WHETHER STATUTORY OR HOME RULE, LOCATED IN THE STATE OF COLORADO.~~

~~(b) "OIL AND GAS DEVELOPMENT" INCLUDES ALL PHYSICAL OR CHEMICAL PROCESSES OR PROCEDURES USED TO EXPLORE FOR, EXTRACT, PROCESS, PRODUCE, STORE, OR TRANSPORT PETROLEUM PRODUCTS, INCLUDING NATURAL GAS, BYPRODUCTS SUCH AS ASPHALT, OR WASTE. RETAILERS OF PETROLEUM PRODUCT CONSUMER GOODS ARE NOT DEVELOPERS.~~

**(3) Local Control of Oil and Gas Development Grant of authority.** ~~(a) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, LOCAL GOVERNMENTS IN COLORADO MAY PLACE RESTRICTIONS ON, RESTRICT THE TIME, PLACE OR METHOD MANNER OF OIL AND GAS DEVELOPMENT, INCLUDING BUT NOT LIMITED TO PROHIBITIONS AND MORATORIA, THE USE OF HYDRAULIC FRACTURING, THAT ARE INTENDED TO PROTECT THEIR COMMUNITIES AND CITIZENS.~~

~~(e) (b) ANY SUCH RESTRICTIONS PLACED BY LOCAL GOVERNMENTS ON OIL AND GAS DEVELOPMENT ARE DEEMED NOT TO BE IN CONFLICT WITH THE STATE'S INTERESTS.~~

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Colorado Secretary of State

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~~(b), (c) NO LOCAL GOVERNMENT MAY ENACT ANY LIMITATIONS, RULES OR REGULATIONS ON OIL AND GAS DEVELOPMENT THAT ARE LESS STRINGENT THAN PROTECTIVE OF ANY INTEREST, INCLUDING PUBLIC HEALTH, WELFARE, SAFETY, OR AIR OR WATER QUALITY, THAN ANY OTHER EXISTING STATE, COLORADO, AND FEDERAL OR CONCURRENT LOCAL PROVISIONS.~~

~~(4) Self-executing and severability, confliction provisions. ALL PROVISIONS OF THIS SECTION ARE SELF-EXECUTING AND SEVERABLE.~~

~~2/21/14  
3/17/14~~

To:  
~~Mike Mauer, Director  
Colorado Legislative Council Staff  
200 E Colfax Ave  
Denver, CO, 80203 USA  
Scott Gessler,  
Secretary of State  
1700 Broadway, Suite 270,  
Denver, Colorado 80290,  
Phone: 303-894-2200~~

From:

Principal Proponents

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Alternate Proponent:  
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*Be it enacted by the People of the State of Colorado:*

**SECTION 1.** The constitution of the state of Colorado, article XVIII is amended by the addition of a new section, Section 17, as follows:

**Section 17: Local control of oil and gas development (1) Purpose and findings.**

(a) THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT THE DEVELOPMENT OF OIL AND GAS, INCLUDING THE USE OF HYDRAULIC FRACTURING, MAY IMPACT LOCAL INTERESTS SUCH AS AIR QUALITY, PUBLIC HEALTH, SAFETY, WELFARE, PROPERTY VALUES, AND THE CHARACTER OF OUR COMMUNITIES; THAT THE PUBLIC HAS HISTORICALLY RELIED UPON LOCAL GOVERNMENTS TO REGULATE CERTAIN LOCAL LAND USES AND TO MINIMIZE POTENTIAL CONFLICTS BETWEEN INDUSTRIAL DEVELOPMENT AND THE INTERESTS OF THE LOCAL COMMUNITY; THAT LOCAL GOVERNMENTS ARE ENTITLED TO PROTECT THEIR PEOPLE AND THEIR COMMUNITIES USING THE PRECAUTIONARY PRINCIPLE; THAT TO PROTECT THESE INTERESTS THE PEOPLE DESIRE TO EXPAND THE AUTHORITY OF LOCAL GOVERNMENTS BY VESTING IN THEM THE RIGHT TO IMPOSE LOCAL RESTRICTIONS ON OIL AND GAS DEVELOPMENT WITHOUT FEAR OF STATE PREEMPTION.

(b) THE PURPOSE OF THIS AMENDMENT IS TO EMPOWER ALL OF COLORADO'S LOCAL GOVERNMENTS TO ADOPT RULES, SUCH AS CHARTER AMENDMENTS, LAWS, ORDINANCES, OR REGULATIONS, TO PROTECT THEIR PUBLIC, THEIR COMMUNITIES, AND THEIR AIR, WATER, AND LAND THROUGH ADDITIONAL LOCAL RESTRICTIONS ON OIL AND GAS DEVELOPMENT, INCLUDING BANS OR MORATORIA ON HYDRAULIC FRACTURING.

(2) **Definitions.** (a) "LOCAL GOVERNMENT" MEANS ANY COUNTY, CITY AND COUNTY, CITY, OR TOWN, WHETHER STATUTORY OR HOME RULE, LOCATED IN THE STATE OF COLORADO.

(b) "OIL AND GAS DEVELOPMENT" INCLUDES ALL PHYSICAL OR CHEMICAL PROCESSES OR PROCEDURES USED TO EXPLORE FOR, EXTRACT, PROCESS, PRODUCE, STORE, OR TRANSPORT PETROLEUM PRODUCTS, INCLUDING NATURAL GAS, BYPRODUCTS SUCH AS ASPHALT, OR WASTE. RETAILERS OF PETROLEUM PRODUCT CONSUMER GOODS ARE NOT DEVELOPERS.

(3) **Grant of authority.** (a) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, LOCAL GOVERNMENTS MAY RESTRICT THE TIME, PLACE OR MANNER OF OIL AND GAS DEVELOPMENT, INCLUDING BUT NOT LIMITED TO PROHIBITIONS OR MORATORIA.

(b) SUCH RESTRICTIONS ARE DEEMED NOT TO BE IN CONFLICT WITH THE STATE'S INTERESTS.

(c) NO LOCAL GOVERNMENT MAY ENACT ANY RULE ON OIL AND GAS DEVELOPMENT THAT IS LESS PROTECTIVE OF ANY INTEREST, INCLUDING PUBLIC HEALTH, WELFARE, SAFETY, OR AIR OR WATER QUALITY, THAN ANY OTHER EXISTING COLORADO, FEDERAL, OR CONCURRENT LOCAL PROVISION.

(4) **Self-executing and severability provisions.** ALL PROVISIONS OF THIS SECTION ARE SELF EXECUTING AND SEVERABLE.

RECEIVED

MAR 17 2014

Colorado Secretary of State

S. WARD  
Hand Delivered

Initiative #82

Proposal - final language

3/17/14

To:

Scott Gessler  
Secretary of State  
1700 Broadway, Suite 270  
Denver, Colorado 80290  
Phone: 303-894-2200

From:

Principal Proponents

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Alternate Proponent:

Suzanne Spiegel  
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**Ballot Title Setting Board**

**Proposed Initiative 2013-2014 #82<sup>1</sup>**

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

An amendment to the Colorado constitution increasing the authority of local governments to restrict the time, place, and manner of oil and gas development, including prohibitions and moratoria, and deeming such local restrictions not to be in conflict with the state's interests.

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 increasing the authority of local governments to restrict the time, place, and manner of oil and gas development, including prohibitions and moratoria, and deeming such local restrictions not to be in conflict with the state's interests?

*Hearing April 2, 2014:  
Single subject approved; staff draft amended; titles set.  
Hearing adjourned 3:49 p.m.*

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<sup>1</sup>Unofficially captioned “**Local Control of Oil and Gas Development**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

APR 09 2014

Colorado Secretary of State

S.WARD 4:17 P.M.

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**BEFORE THE COLORADO BALLOT TITLE SETTING BOARD**

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IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE  
2013-2014 #82

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**MOTION FOR REHEARING**

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Registered electors, Mizraim S. Cordero and Scott Prestidge, through their legal counsel, Hogan Lovells US LLP, request a rehearing of the Title Board for Initiative 2013-2014 #82. As set forth below, Mr. Cordero 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 April 2, 2014, the Title Board designated the title as follows:

An amendment to the Colorado constitution increasing the authority of local governments to restrict the time, place, and manner of oil and gas development, including prohibitions and moratoria, and deeming such local restrictions not to be in conflict with the state's interests.

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

Shall there be an amendment to the Colorado constitution increasing the authority of local governments to restrict the time, place, and manner of oil and gas development, including prohibitions and moratoria, and deeming such local restrictions not to be in conflict with the state's interests?

**GROUND FOR RECONSIDERATION****I. The Proponents Failed to Submit the Measure to Legislative Council and the Office of Legal Services for Review and Comment.**

By submitting the final text of measure #82 directly to the Title Board, proponents failed to comply with Article V, Section 1(5) of the Colorado constitution, which requires that proposed initiated constitutional amendments be submitted to Legislative Council and the Office of Legal Services for review and comment. *See Matter of Title, Ballot Title & Submission Clause, & Summary Adopted May 16, 1990, 797 P.2d 1283, 1287 (Colo. 1990).*

The purpose of the review and comment meeting is to inform the public, as well as the proponents, of the potential impacts of the proposed initiative. *Id.* If, after the review and comment meeting, proponents make substantial changes to the petition, proponents are required to submit the amended measure to the legislative offices for additional review and comment. *Id.*;

C.R.S. § 1-40-105(2). Failure to adhere to this requirement deprives the Title Board of jurisdiction to set title. *Matter of Title*, 797 P.2d at 1287.

As noted by the representative for Legislative Council and the Office of Legal Services, Ms. Eubanks, proponents made significant changes to the original text of #82 and did not submit the final text of the measure to the legislative offices. When comparing the final text of measure # 82 to the original text, it is clear that the final version bears little resemblance to the original. Rather, the final version is an entirely new measure. The table below illustrates the major differences between the drafts.

Section	Original #82	Final #82
1. Purpose and findings	States that: <ul style="list-style-type: none"> <li>• the Colorado constitution confers certain “inalienable rights” and that local governments may enact laws intended to protect such inalienable rights. (Emphasis added).</li> </ul>	States that: <sup>1</sup> <ul style="list-style-type: none"> <li>• the development of oil and gas may impact local interests;</li> <li>• the public relies upon local governments to regulate land uses;</li> <li>• local governments are entitled to protect people and communities using the “precautionary principle”; and</li> <li>• to protect such interests, the authority of local governments shall be expanded to allow for regulation of oil and gas development.</li> </ul>
2. Definitions	Defines: <ul style="list-style-type: none"> <li>• local government</li> </ul>	Defines: <ul style="list-style-type: none"> <li>• local government; and</li> <li>• “oil and gas development,” to include “all physical or chemical processes or procedures used to explore for, extract, process, produce, store, or transport petroleum products, including natural gas, byproducts such as asphalt, or waste. Retailers of petroleum product consumer goods are not developers.”</li> </ul>

<sup>1</sup> Much of this text was taken directly from other local-control initiatives 2013-204 (see e.g. #93 attached hereto as Exhibit B), submitted by different proponents.

3. Authority of Local Governments	Allows local governments to: <ul style="list-style-type: none"> <li>• restrict the “time, place or method of oil and gas development,”</li> <li>• however, no such limitation may be less stringent than existing state and federal law.</li> </ul>	Allows local governments to: <ul style="list-style-type: none"> <li>• <u>prohibit</u> or restrict the time place and manner of oil and gas development,</li> <li>• however, no such limitation may be less protective of “any interest including public health, welfare, safety, or air or water quality, than any other existing Colorado, federal, or concurrent local provision.”</li> </ul>
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See Amended Text of #82, attached hereto as Exhibit A.

Relying on C.R.S. § 1-40-105(2), proponents argued that the changes to the measure were made in “direct response” to the numerous questions included in the Review and Comment Memorandum. See C.R.S. § 1-40-105(2) (stating that, “If any substantial amendment is made to the petition, other than an amendment in direct response to the comments of the directors of the legislative council and the office of legislative legal services, the amended petition shall be resubmitted to the directors for comment.”) (emphasis added). Whether or not proponents made these changes in “direct response” to the questions posed in the review and comment public misses the point.<sup>2</sup> The Colorado constitution requires significantly amended measures go through the review and comment process. *Matter of Title*, 797 P.2d at 1287.

In *Matter of Title*, the Colorado Supreme Court held that the Title Board lacked jurisdiction to set title for an amended measure because the proponents failed to submit the amendment to the legislative offices for review and comment. 797 P.2d at 1287. In that case, proponents submitted two measures to the Title Board for title setting, the “April initiative” and the “May initiative.” *Id.* at 1285. Proponents first submitted the April initiative to the legislative offices for review and comment and to the Board for title setting. *Id.* After title was set on the April initiative, proponents submitted the May initiative directly to the Title Board for title setting. *Id.* Proponents argued that they were not required to submit the May initiative to the legislative offices for review and comment because the May initiative was simply an amended version of the April initiative that used the same language, but was more limited in scope. *Id.* at 1287. The Supreme Court disagreed and held that the Title Board lacked jurisdiction to set title pursuant to Article V, Section 1(5) of the Colorado constitution. *Id.* Among other concerns, the Court stated that, “Without the public meeting for comments and review on the May initiative, the public would have no way to know that some portions of the April initiative had been revised and resubmitted for the setting of a new title. Contrary to the constitutional requirement, there

<sup>2</sup> Notwithstanding, at the title hearing, proponents could not explain how the amended measure was revised in direct response to the questions of the legislative offices.

was no opportunity for public analysis of the May initiative before it was submitted to the Secretary of State for fixing the title.” *Id.* (emphasis added).

Given this constitutional requirement, C.R.S. § 1-40-105(2) cannot be construed to allow proponents to draft a substantial amendment and submit it directly to the Title Board without review and comment. Such a construction would be contrary to the primary purpose of the review and comment process – to inform the public and proponents of the proposed initiative’s potential impacts. *See Matter of Title*, 797 P.2d at 1287. Because the proponents failed to submit the final text of #82 to the legislative offices, the public was not notified that the final text of #82: (1) does not protect inalienable rights, (2) incorporates an entirely new and different “Purpose and Findings”, (3) includes an expansive definition of “oil and gas development” covering petroleum products, byproducts, asphalt and waste, and (4) prohibits local laws that are “less protective of any interest.” Accordingly, the Title Board lacks jurisdiction to set title for measure #82.

## **II. The Initiative Impermissibly Contains Multiple Subjects.**

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 (Colo. Const. art. V., § 1(5.5); C.R.S. § 1-40-106.5), the Board set title for initiative #82 despite the fact that it contains multiple, distinct and separate purposes that are not dependent upon or connected with each other. Specifically, under the guise of local control of “oil and gas development” the initiative actually includes the following several, unrelated subjects:

- (1) Expanding the authority of local governments to prohibit oil and gas development (#82, § 3(a));
- (2) Granting local governments the ability to restrict the “time, place and manner of oil and gas development” (#82, § 3(a));
- (3) Expanding the authority of local governments to regulate “petroleum products” including “byproducts such as asphalt or waste” (#82, § 2(b));
- (4) Deeming that local restrictions and prohibitions of oil and gas development are not in conflict with the state’s interest; and
- (5) Empowering local governments to “protect their people and their communities using the precautionary principle” (#82, § 1(a)).

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.

### **III. The Measure's Grant of Authority to Local Governments is So Vague that It Is Not Possible to Set a Title that Accurately Reflects the Measure's Purpose.**

The measure purports to grant authority to local governments to prohibit or restrict the time, place and manner of "oil and gas development." However, the measure's definition of "oil and gas development" and the limits placed on local governments when enacting such laws are so vague that the Board cannot set an adequate title pursuant to C.R.S. § 1-40-106(3)(c), for the following reasons:

- (1) The measure purports to grant authority to local governments "to protect their people and communities using the precautionary principle." However, the measure does not provide a definition of "precautionary principle." Therefore, no title can accurately describe this grant of authority to local governments.
- (2) The definition in Section 2(b) of "oil and gas development" is so expansive and unclear that it could be construed to allow local laws affecting a limitless number of industries, businesses, and products. Among other things, this definition allows local governments to regulate all facets of the production of petroleum products, petroleum byproducts, asphalt and waste. Other than the inclusion of natural gas and asphalt, petroleum products and byproducts are not defined and could be construed to include the thousands of commercial products made from petroleum (*e.g.* plastics, paints, tires, gasoline, and fabrics). Moreover, the measure grants local governments authority to regulate "all physical or chemical processes or procedures used to explore for, extract, process, produce, store or transport," such products. In addition to traditional upstream exploration and production of oil and gas, this could encompass a vast array of activities including the manufacturing and shipping of all petroleum based products, oil refining, natural gas gathering and processing, public utilities, production, and storage and transportation of "waste." Therefore, no title can describe the extent to which local governments may regulate "oil and gas development" pursuant to this measure.
- (3) The last sentence in Section 2(b): "Retailers of petroleum product consumer goods are not developers" further adds to the vagueness of the measure. The term "developer" does not appear in any other part of measure. Therefore, it is unclear what, if any, affect this sentence has on the authority of local governments.
- (4) Finally, in section 3(c), the measure states that local governments may not enact regulations that are less protective of "any interest, including public health..., than any other existing Colorado, federal or concurrent local provision." However, it is unclear the extent to which Section 3(c) limits the authority of local governments. The term "interest" is not defined. In addition to "public health, welfare safety or air or water quality," this term could be construed to include property rights, contractual rights, or other individual interests. Additionally, the term "concurrent local provision" is also

vague and unclear. Therefore, no title can describe how the authority of local governments is limited by section 3(c).

The language of the measure is so vague that no title can correctly and fairly express the true purpose of the measure.<sup>3</sup> Therefore, the Title Board lacks jurisdiction to set a title.

**IV. 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)(a). "[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 #82 are misleading and confusing because they fail to describe important aspects of the measure. Among other defects, the title and submission clause:

(1) Do not reflect the grant of local governmental authority to protect people and communities under the precautionary principle as provided in Section 1(a);

(2) Fail to provide notice of the expansive definition of oil and gas development provided in Section 2(b); and

(3) Do not describe the limits of local authority described in 3(c).

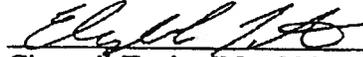
Based on the foregoing, Mr. Cordero and Mr. Prestidge request a rehearing of the Title Board for Initiative 2013-2014 #82. Because the initiative is incapable of being expressed in a single subject, was not submitted for review and comment, and is impermissibly vague, the Title Board lacks jurisdiction to set a title and should reject the measure. Alternatively, Mr. Cordero and Mr. Prestidge respectfully request that the Title Board amend the title consistent with the concerns set forth above.

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<sup>3</sup> The vagueness of this measure further underscores the necessity of the review and comment process (*see infra* § II).

Respectfully submitted this 9<sup>th</sup> day of April, 2014 by:

HOGAN LOVELLS US LLP



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Phone: (303) 899-7300  
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*Attorneys for Mizraim S. Cordero  
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Objectors address:

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Commerce City, CO 80022

Scott Prestidge  
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Denver, CO 80207

# EXHIBIT A

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

SECTION 1. ~~Article XVIII of the constitution of the state of Colorado, Article XVIII is amended by the addition of a new section, section 17 to read as follows:~~

**Section 17: Local Control of Oil and Gas Development** (1) **Purpose and findings.** (a) ~~THE COLORADO CONSTITUTION CONFERS CERTAIN RIGHTS ON THE CITIZENS OF THE STATE, INCLUDING INALIENABLE RIGHTS UNDER ARTICLE II, SECTION 2. THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT THE DEVELOPMENT OF OIL AND GAS, INCLUDING THE USE OF HYDRAULIC FRACTURING, MAY IMPACT LOCAL INTERESTS SUCH AS AIR QUALITY, PUBLIC HEALTH SAFETY WELFARE, PROPERTY VALUES AND THE CHARACTER OF OUR COMMUNITIES; THAT THE PUBLIC HAS HISTORICALLY RELIED UPON LOCAL GOVERNMENTS TO REGULATE CERTAIN LOCAL LAND USES AND TO MINIMIZE POTENTIAL CONFLICTS BETWEEN INDUSTRIAL DEVELOPMENT AND THE INTERESTS OF THE LOCAL COMMUNITY THAT LOCAL GOVERNMENTS ARE ENTITLED TO PROTECT THEIR PEOPLE AND THEIR COMMUNITIES USING THE PRECAUTIONARY PRINCIPLE; THAT TO PROTECT THESE INTERESTS THE PEOPLE DESIRE TO EXPAND THE AUTHORITY OF LOCAL GOVERNMENTS BY VESTING IN THEM THE RIGHT TO IMPOSE LOCAL RESTRICTIONS ON OIL AND GAS DEVELOPMENT WITHOUT FEAR OF STATE PREEMPTION.~~

(b) ~~LOCAL GOVERNMENTS IN THE STATE OF COLORADO MAY ENACT LOCAL CHARTER AMENDMENTS, LAWS, ORDINANCES AND/OR REGULATIONS INTENDED TO PROTECT THE INALIENABLE RIGHTS OF ITS CITIZENS. THE PURPOSE OF THIS AMENDMENT IS TO EMPOWER ALL OF COLORADO'S LOCAL GOVERNMENTS TO ADOPT RULES, SUCH AS CHARTER AMENDMENTS LAWS, ORDINANCE, OR REGULATION TO PROTECT THEIR PUBLIC, THEIR COMMUNITIES, AND THEIR AIR, WATER AND LAND THROUGH ADDITIONAL LOCAL RESTRICTIONS ON OIL AND GAS DEVELOPMENT, INCLUDING BAN OR MORATORIA ON HYDRAULIC FRACTURING.~~

(2) **Definitions.** (a) ~~"LOCAL GOVERNMENT" MEANS ANY COUNTY, CITY AND COUNTY, CITY, OR TOWN, WHETHER STATUTORY OR HOME RULE, LOCATED IN THE STATE OF COLORADO.~~

(b) ~~"OIL AND GAS DEVELOPMENT" INCLUDES ALL PHYSICAL OR CHEMICAL PROCESSES OR PROCEDURES USED TO EXPLORE FOR, EXTRACT, PROCESS, PRODUCE STORE OR TRANSPORT PETROLEUM PRODUCTS, INCLUDING NATURAL GAS BYPRODUCTS SUCH AS ASPHALT, OR WASTE. RETAILERS OF PETROLEUM PRODUCT CONSUMER GOODS ARE NOT DEVELOPERS~~

(3) **Local Control of Oil and Gas Development.** Grant of authority. (a) ~~NOTWITHSTANDING ANY OTHER PROVISION OF LAW, LOCAL GOVERNMENTS IN COLORADO MAY PLACE RESTRICTIONS ON, RESTRICT THE TIME, PLACE OR METHOD MANNER OF OIL AND GAS DEVELOPMENT, INCLUDING BUT NOT LIMITED TO PROHIBITIONS AND MORATORIA THE USE OF HYDRAULIC FRACTURING, THAT ARE INTENDED TO PROTECT THEIR COMMUNITIES AND CITIZENS.~~

(b) ~~ANY SUCH RESTRICTIONS PLACED BY A LOCAL GOVERNMENT ON OIL AND GAS DEVELOPMENT ARE DEEMED NOT TO BE IN CONFLICT WITH THE STATE'S INTERESTS.~~

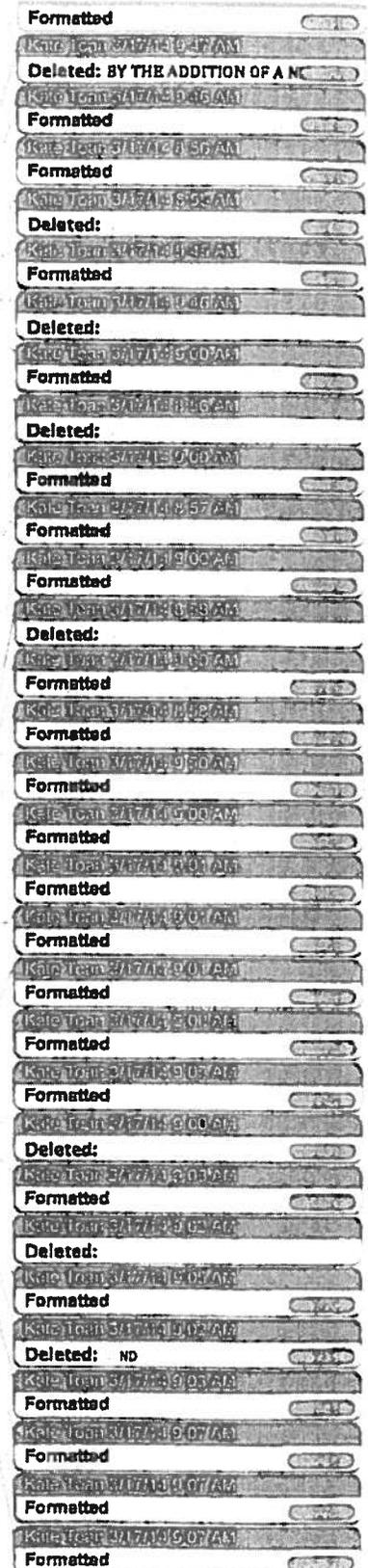
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MAR 17 2014

Colorado Secretary of State

S. WARD

Via Hand Delivery



Initiative #82

Proposal as revised with changes highlighted

~~(b) (c) NO LOCAL GOVERNMENT MAY ENACT ANY LIMITATIONS, RULES OR REGULATIONS ON OIL AND GAS DEVELOPMENT THAT ARE LESS STRINGENT THAN PROTECTIVE OF ANY INTEREST INCLUDING PUBLIC HEALTH, WELFARE, SAFETY OR AIR OR WATER QUALITY THAN ANY OTHER EXISTING STATE, COLORADO, AND FEDERAL OR CONCURRENT LOCAL PROVISIONS.~~

~~(4) Self-executing and severability, confliction provisions. ALL REVISIONS OF THIS SECTION ARE SELF-EXECUTING AND SEVERABLE.~~

~~2/21/14  
3/17/14~~

To:  
Mike Mauer, Director  
Colorado Legislative Council Staff  
200 E Colfax Ave  
Denver, CO, 80203 USA  
Scott Gessler,  
Secretary of State  
1700 Broadway, Suite 270,  
Denver, Colorado 80290  
Phone: 303-894-2200

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# EXHIBIT B

2013-2014 #93 Original

VERSION #3D

REC'D  
MAR 21 2014  
Colorado Secretary of State

S. ARD  
1:5PM.

*Be it enacted by the People of the State of Colorado:*

The constitution of the state of Colorado is amended BY THE ADDITION OF A NEW ARTICLE: \*\*\*

LOCAL GOVERNMENT CONTROL OF OIL AND GAS OPERATIONS INCLUDING HYDRAULIC FRACTURING

**SECTION 1. PURPOSES AND FINDINGS.**

THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT THE CONDUCT OF OIL AND GAS OPERATIONS, INCLUDING THE USE OF HYDRAULIC FRACTURING, MAY IMPACT PROPERTY VALUE, PUBLIC HEALTH, SAFETY, WELFARE, AND THE ENVIRONMENT; THAT ANY IMPACTS ARE EXPERIENCED MOST DIRECTLY IN LOCAL COMMUNITIES; THAT THE CITIZENS OF LOCAL COMMUNITIES HAVE HISTORICALLY RELIED UPON LOCAL GOVERNMENTS TO REGULATE LOCAL LAND USES AND TO MINIMIZE POTENTIAL LAND USE CONFLICTS BETWEEN INDUSTRIAL DEVELOPMENT AND RESIDENTIAL DEVELOPMENT; THAT TO PRESERVE THE PUBLIC'S HEALTH, SAFETY, WELFARE, AND THE ENVIRONMENT, THE PEOPLE DESIRE TO EXPAND THE AUTHORITY OF LOCAL GOVERNMENTS BY VESTING IN THEM THE RIGHT TO REGULATE OIL AND GAS OPERATIONS.

**SECTION 2. GRANT OF AUTHORITY.**

THE PEOPLE OF THE STATE OF COLORADO HEREBY VEST THE RIGHT, POWER AND AUTHORITY IN LOCAL GOVERNMENTS TO REGULATE OIL AND GAS OPERATIONS WITHIN THEIR GEOGRAPHIC BORDERS; THIS RIGHT, POWER AND AUTHORITY INCLUDES THE ABILITY TO ENACT LOCAL PROHIBITIONS OR LIMITS ON OIL AND GAS OPERATIONS, INCLUDING HYDRAULIC FRACTURING. LOCAL LAWS, REGULATIONS, ORDINANCES, OR CHARTER PROVISIONS MAY BE MORE RESTRICTIVE AND PROTECTIVE OF A COMMUNITY'S HEALTH, SAFETY, WELFARE AND ENVIRONMENT THAN LAWS THAT MAY BE ENACTED BY THE GENERAL ASSEMBLY OR REGULATIONS ADOPTED BY EXECUTIVE AGENCIES OF THE STATE. FOR PURPOSES OF THIS ARTICLE, "OIL AND GAS OPERATIONS" MEANS EXPLORATION FOR AND PRODUCTION OF COLORADO'S OIL, GAS, OTHER GASEOUS AND LIQUID HYDROCARBONS, AND CARBON DIOXIDE. THE PROVISIONS OF THIS ARTICLE SHALL APPLY TO EVERY COLORADO CITY, TOWN, COUNTY, AND CITY AND COUNTY, NOTWITHSTANDING ANY PROVISION OF ARTICLE XX, OR SECTION 16 OF ARTICLE XIV, OF THE COLORADO CONSTITUTION.

**SECTION 3. NOT A TAKING.**

ANY LAW, REGULATION, PROHIBITION, OR LIMIT ENACTED PURSUANT TO THIS ARTICLE SHALL NOT BE CONSIDERED A TAKING OF PRIVATE PROPERTY NOR REQUIRE THE PAYMENT OF JUST COMPENSATION PURSUANT TO ART. II, SECTIONS 14 AND 15 OF THE COLORADO CONSTITUTION.

**SECTION 4. 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 IN NO WAY SHALL THEY LIMIT OR RESTRICT THE PROVISIONS OF THIS ARTICLE OR THE POWERS AND RIGHTS HEREIN GRANTED. IF ANY LOCAL LAW, REGULATION, ORDINANCE, OR CHARTER PROVISION ENACTED OR ADOPTED PURSUANT TO THIS ARTICLE CONFLICTS WITH A STATE LAW OR REGULATION, THE MORE RESTRICTIVE AND PROTECTIVE LAW OR REGULATION SHALL GOVERN.

## **Ballot Title Setting Board**

### **Proposed Initiative 2013-2014 #82<sup>1</sup>**

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

An amendment to the Colorado constitution increasing the authority of local governments to restrict or prohibit oil and gas development which includes all physical or chemical procedures used to explore for, extract, process, produce, store or transport petroleum products, byproducts, or waste, and deeming such local restrictions not to be in conflict with the state's interests.

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 increasing the authority of local governments to restrict or prohibit oil and gas development which includes all physical or chemical procedures used to explore for, extract, process, produce, store or transport petroleum products, byproducts, or waste, and deeming such local restrictions not to be in conflict with the state's interests?

*Hearing April 2, 2014:*

*Single subject approved; staff draft amended; titles set.*

*Hearing adjourned 3:49 p.m.*

*Rehearing April 16, 2014:*

*Motion for Rehearing denied except to the extent that the Board made changes to the titles.*

*Hearing adjourned 11:32 a.m.*

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<sup>1</sup>Unofficially captioned "Local Control of Oil and Gas Development" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.