

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

DATE FILED: April 23, 2014 3:42 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 #93 (“Oil and Gas Operations”)

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

v.

**Respondents: CAITLIN LEAHY and  
GREGORY DIAMOND**

**and**

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

▲ COURT USE ONLY ▲

Attorneys for Petitioners:

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  
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Case No. \_\_\_\_\_

**PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE  
SETTING BOARD CONCERNING PROPOSED INITIATIVE 2013-  
2014 #93 (“OIL AND GAS OPERATIONS”)**

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 #93 (“Oil and Gas Operations”) (hereinafter “Proposed Initiative”).

## **STATEMENT OF THE CASE**

### **A. Procedural History of Proposed Initiative #93**

Caitlin Leahy and Gregory Diamond (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 14, 2014.

Proponents thereafter submitted a final version of the Proposed Initiative to the Secretary of State on March 21, 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 3, 2014 meeting. On April 10, 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 the Proposed Initiative violated the single-subject requirement. In the alternative, Petitioners argued that the title was misleading

because it failed to describe important aspects of the measure, contained an impermissible catch phrase and contrary to the requirements of C.R.S. § 1-40-106(3), it was nearly identical the title set for proposed initiative 2013–2014 #90 and 2013–2014 #91. Even though Proponents did not file a motion for rehearing, the Proponents requested that the Title Board make changes to the title and submission clause to remove the word “prohibit”. 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. The Title Board granted the Proponents’ request and removed the word “prohibit” from the title and submission clause.

## **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.

### **GROUNDS FOR APPEAL**

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. In violation of C.R.S. § 1-40-106(3), the Title Board set a title that is was nearly identical the title set for proposed initiative initiatives 2013–2014 #90, 2013–2014 #91, and 2013–2014 #92. 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. The Title Board lacked jurisdiction to set title because the Proposed Initiative contains the following multiple, distinct and not interdependent subjects under a single umbrella category of local government regulation of oil and gas development, which include:
  - a. Expanding the authority of local governments to prohibit or limit the exploration and production of “Colorado’s oil and gas”;

- b. Depriving property owners of rights and protections granted under Sections 14 and 15 of Article II of the Colorado constitution;
  - c. Exempting local governments from complying with the requirements of Article XX and Section 16 of Article XIV of the Colorado constitution; and
  - d. Changing the legal standard used to determine the validity of a local law that conflicts with a state law.
2. 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) that a local government's authority to regulate oil and gas development would be limited to regulation of the development of minerals belonging to the state; and (b) that the measure purports to grant local governments the authority to prohibit oil and gas operations. In addition, the title set for the Proposed Initiative improperly mirrors the titles previously set by the Board for another proposed initiatives, preventing voters comparing the titles from being able to distinguish between the two proposed initiatives.

### **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

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Hogan Lovells US LLP

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**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 #93 (“Oil and Gas Operations”)** was served via e-mail and U.S. Mail upon:

Edward T. Ramey, Esq.  
Martha Tierney, Esq.  
Heizer Paul LLP  
2401 Fifteenth Street, Suite 300  
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**Attorneys for the Ballot Title Setting Board**

s/ Helen Hyatt



DATE FILED: April 23, 2014 3:43 PM

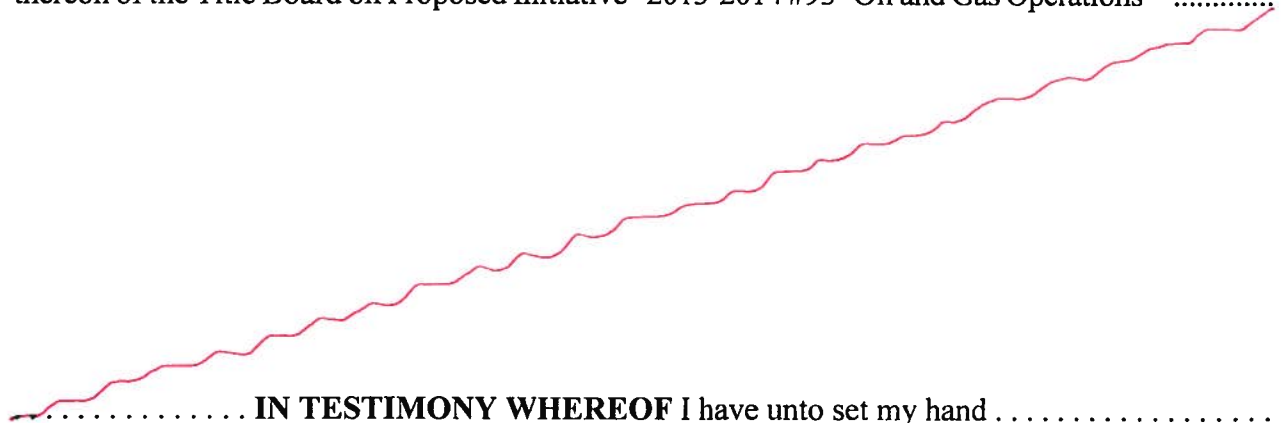
# STATE OF COLORADO

DEPARTMENT OF  
STATE

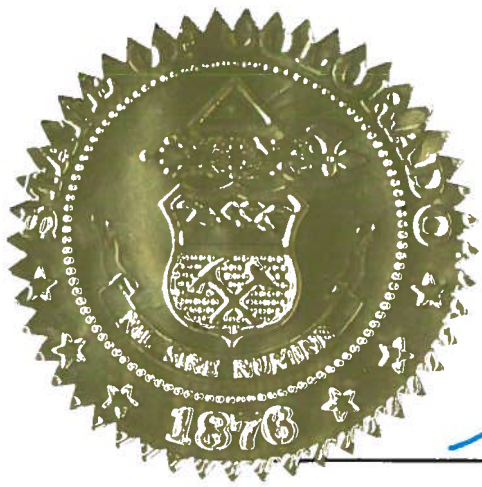
## CERTIFICATE

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, motions for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2013-2014 #93 'Oil and Gas Operations'" .....



..... **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



2013-2014 #93 Original

**VERSION #3D**

RECEIVED

MAR 21 2014

S. WARD  
1:15 PM.

Colorado Secretary of State

*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 ARTICLE 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.

RECEIVED

MAR 21 2014

Colorado Secretary of State

S. WARD 1:15 P.M.

2013-2014 #93- AMENDED

~~VERSION #3D~~

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

~~SECTION 1. In the constitution of the state of Colorado, add article XXX as follows: is amended BY THE ADDITION OF A NEW ARTICLE: \*\*\*~~

ARTICLE XXX

Local Government Control of Oil and Gas ~~Development~~ Operations Including Hydraulic Fracturing

~~SECTION 1. PURPOSES AND FINDINGS~~ Section 1. Purposes and findings.

THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE:

(a) THAT THE CONDUCT OF OIL AND GAS ~~DEVELOPMENT~~ OPERATIONS, INCLUDING THE USE OF HYDRAULIC FRACTURING, MAY IMPACT ~~PROPERTY VALUE~~, PUBLIC HEALTH, SAFETY, WELFARE, AND THE ENVIRONMENT;

(b) THAT ANY IMPACTS ARE EXPERIENCED MOST DIRECTLY IN LOCAL COMMUNITIES; AND

(c) 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; AND

(d) 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 ~~DEVELOPMENT~~ OPERATIONS.

~~SECTION 2. GRANT OF AUTHORITY~~ 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 ~~DEVELOPMENT~~ OPERATIONS WITHIN THEIR GEOGRAPHIC BORDERS; THIS RIGHT, POWER, AND AUTHORITY INCLUDES THE ABILITY TO ENACT ~~PROHIBITIONS OR LIMITS ON OIL AND GAS DEVELOPMENT 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 ~~DEVELOPMENT~~ 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 ~~A~~ARTICLE XX, OR ~~S~~SECTION 16 OF ~~A~~ARTICLE XIV, OF THE COLORADO ~~C~~ONSTITUTION.

~~SECTION 3. NOT A TAKING~~ Section 3. Not a taking.

ANY LAW, REGULATION, PROHIBITION, OR LIMIT ENACTED PURSUANT TO THIS ARTICLE ~~SHALL~~ IS NOT BE ~~CONSIDERED~~ A TAKING OF PRIVATE PROPERTY AND DOES ~~NOT~~ REQUIRE THE PAYMENT OF JUST COMPENSATION PURSUANT TO ~~ART. II, S~~SECTIONS 14 AND 15 OF ARTICLE II OF THE COLORADO ~~C~~ONSTITUTION.

**~~SECTION 4. SELF-EXECUTING, SEVERABILITY, CONFLICTING PROVISIONS~~ 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 LIMITING~~ OR RESTRICTING 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 GOVERNS~~.

RECEIVED

MAR 21 2014

2013-2014 #93- FINAL

Colorado Secretary of State

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

SWARD 1.15 PM

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

### ARTICLE XXX

#### Local Government Control of Oil and Gas Development Including Hydraulic Fracturing

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

(a) THAT THE CONDUCT OF OIL AND GAS DEVELOPMENT, INCLUDING THE USE OF HYDRAULIC FRACTURING, MAY IMPACT PUBLIC HEALTH, SAFETY, WELFARE, AND THE ENVIRONMENT;

(b) THAT ANY IMPACTS ARE EXPERIENCED MOST DIRECTLY IN LOCAL COMMUNITIES; AND

(c) 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; AND

(d) 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 DEVELOPMENT.

**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 DEVELOPMENT WITHIN THEIR GEOGRAPHIC BORDERS; THIS RIGHT, POWER, AND AUTHORITY INCLUDES THE ABILITY TO ENACT LIMITS ON OIL AND GAS DEVELOPMENT, 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 DEVELOPMENT" MEANS EXPLORATION FOR AND PRODUCTION OF COLORADO'S OIL, GAS, OTHER GASEOUS AND LIQUID HYDROCARBONS, AND CARBON DIOXIDE. THE PROVISIONS OF THIS ARTICLE 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 IS NOT A TAKING OF PRIVATE PROPERTY AND DOES NOT REQUIRE THE PAYMENT OF JUST COMPENSATION PURSUANT TO SECTIONS 14 AND 15 OF ARTICLE II OF THE COLORADO CONSTITUTION.

**Section 4. 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 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 GOVERNS.

## **Ballot Title Setting Board**

### **Proposed Initiative 2013-2014 #93<sup>1</sup>**

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

An amendment to the Colorado constitution concerning local government regulation of oil and gas development, and, in connection therewith, allowing local governments to prohibit or limit oil and gas development, including hydraulic fracturing; authorizing local laws and regulations that are more restrictive and protective of a community's health, safety, welfare, and environment than state law; declaring that if state or local laws and regulations conflict the more restrictive law or regulation governs; and specifying that such local laws and regulations are not a taking of private property requiring compensation under the Colorado constitution.

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 local government regulation of oil and gas development, and, in connection therewith, allowing local governments to prohibit or limit oil and gas development, including hydraulic fracturing; authorizing local laws and regulations that are more restrictive and protective of a community's health, safety, welfare, and environment than state law; declaring that if state or local laws and regulations conflict the more restrictive law or regulation governs; and specifying that such local laws and regulations are not a taking of private property requiring compensation under the Colorado constitution?

*Hearing April 3, 2014:  
Single subject approve; staff draft amended; titles set.  
Hearing adjourned 11:50 a.m.*

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

RECEIVED

APR 10 2014

Colorado Secretary of State

S.WARD 3:36 P.M.

**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 #93

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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 #93. 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 3, 2014, the Board set the title as follows:

An amendment to the Colorado constitution concerning local government regulation of oil and gas development, and, in connection therewith, allowing local governments to prohibit or limit oil and gas development, including hydraulic fracturing; authorizing local laws and regulations that are more restrictive and protective of a community's health, safety, welfare, and environment than state law; declaring that if state or local laws and regulations conflict the more restrictive law or regulation governs; and specifying that such local laws and regulations are not a taking of private property requiring compensation under the Colorado constitution.

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

Shall there be an amendment to the Colorado constitution concerning local government regulation of oil and gas development, and, in connection therewith, allowing local governments to prohibit or limit oil and gas development, including hydraulic fracturing; authorizing local laws and regulations that are more restrictive and protective of a community's health, safety, welfare, and environment than state law; declaring that if state or local laws and regulations conflict the more restrictive law or regulation governs; and specifying that such local laws and regulations are not a taking of private property requiring compensation under the Colorado constitution?

**GROUND FOR RECONSIDERATION**

**I. 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 #93 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 or limit the exploration and production of Colorado’s oil and gas (#93, § 2);
- (2) Depriving property owners of the rights and protections granted under Sections 14 and 15 of Article II of the Colorado constitution (#93, § 3);
- (3) Exempting local governments from complying with the requirements of Article XX and Section 16 of Article XIV of the Colorado constitution (#93, § 2); and
- (4) Changing the legal standard used to determine the validity of a local law that conflicts with a state law (#93, § 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 and Contain an Impermissible Catch Phrase.**

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). “[A] material omission can create misleading titles.” *In re Title, Ballot and Submission Clause 1999–2000 #258A*, 4 P.3d 1094, 1098 (Colo. 2000). Titles are also prohibited from containing a “catch phrase” that unfairly prejudices the proposal in its favor. *Id.*

The title and submission clause for measure #93 are misleading and confusing because they fail to describe important aspects of the measure. Also, the title and submission clause include an impermissible catch phrase. Among other defects, the title and submission clause:

- (1) Fail to reflect that the measure increases the authority of local governments to enact laws that prohibit or limit oil and gas operations;
- (2) Do not provide notice of the measure’s definition of oil and gas operations; and
- (3) Include the catch phrase “hydraulic fracturing,” which is politically charged and is likely to appeal to voter emotion without contributing to public understanding of the relationship between the initiative and hydraulic fracturing; and
- (4) Contrary to the requirements of C.R.S. § 1-40-106(3), the title and submission clause are nearly identical to those set for proposed initiatives 2013–2014 #90, 2013–2014 #91, and 2013–2014 #92.



Therefore, in the alternative, opponents request a title and submission clause that reflect these important aspects of the measure and the removal of the impermissible catch phase.

### **CONCLUSION**

Based on the foregoing, Mr. Cordero and Mr. Prestidge request a re-hearing of the Title Board for Initiative 2013-2014 #93. 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. Cordero and Mr. Prestidge respectfully request that the Title Board amend the title and submission clause consistent with the concerns set forth above.

Respectfully submitted this 10<sup>th</sup> day of April, 2014 by:

HOGAN LOVELLS US LLP



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

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*Attorneys for Mizraim S. Cordero  
and Scott Prestidge*

Objectors address:

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Commerce City, CO 80022

Scott Prestidge  
2885 Quebec St.  
Denver, CO 80207

## Ballot Title Setting Board

### **Proposed Initiative 2013-2014 #93<sup>1</sup>**

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

An amendment to the Colorado constitution concerning local government regulation of oil and gas development, and, in connection therewith, increasing local government authority to limit oil and gas development; authorizing local laws and regulations that are more restrictive and protective of a community's health, safety, welfare, and environment than state law; declaring that if state or local laws and regulations conflict the more restrictive law or regulation governs; and specifying that such local laws and regulations are not a taking of private property requiring compensation under the Colorado constitution.

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 local government regulation of oil and gas development, and, in connection therewith, increasing local government authority to limit oil and gas development; authorizing local laws and regulations that are more restrictive and protective of a community's health, safety, welfare, and environment than state law; declaring that if state or local laws and regulations conflict the more restrictive law or regulation governs; and specifying that such local laws and regulations are not a taking of private property requiring compensation under the Colorado constitution?

*Hearing April 3, 2014:  
Single subject approve; staff draft amended; titles set.  
Hearing adjourned 11:50 a.m.*

*Rehearing April 16, 2014:  
Motion for Rehearing granted to the extent that the Board made changes to the titles; denied in all other respects.  
Hearing adjourned 3:51 p.m.*

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