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SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	
Original Proceeding Pursuant to §1-40-107(2), C.R.S. (2013) Appeal from the Ballot Title Board	
In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2013-2014 #88 **Petitioners/Cross-Respondents:** MIZRAIM CORDERO and SCOTT PRESTIDGE v. **Respondents/Cross-Petitioners:** CAITLIN ANNE LEAHY and GREGORY M. DIAMOND **and** **Title Board:** SUZANNE STAIERT; DANIEL DOMENICO; and JASON GELENDER	**▲ COURT USE ONLY ▲**
Attorneys for Respondents/Cross-Petitioners: Martha M. Tierney, #27521 Edward T. Ramey, #6748 Heizer Paul LLP 2401 15th Street, Suite 300 Denver, CO 80202 Telephone: 303-595-4747 Facsimile: 303-595-4750 Email: mtierney@hpfirm.com eramey@hpfirm.com	Supreme Court Case No. 14SA125 (Initiative #88)
RESPONDENTS/CROSS-PETITIONERS' RESPONSE TO PETITION FOR REHEARING CONCERNING PROPOSED INITIATIVE 2013-2014 #88	

Caitlin Anne Leahy and Gregory M. Diamond (jointly "Respondents/Cross-Petitioners" or "Proponents"), registered electors of the State of Colorado, through their undersigned counsel, and pursuant to C.A.R. 27(a), respectfully submit this Response to the Petition for Rehearing Concerning Proposed Initiative 2013-2014 #88 filed by Petitioners Mizraim Cordero and Scott Prestidge in regards to the title, ballot title and submission clause (the "Title") set by the Ballot Title Setting Board with regard to Proposed Initiative 2013-2014 #88 ("Initiative #88).

Respectfully, the facts that Petitioners cite in their Motion are inaccurate and should be disregarded. Despite media reports and the Petitioners' reliance on them, Proponents have not circulated petitions for Initiative #85, nor will they until after this Court rules on the ballot title challenges for Initiatives #85, #86 and #87, and the Proponents make a final decision on which measure to pursue to the ballot. Proponents are presently circulating petitions for Initiative #88, and for Initiative #89, which is an entirely unrelated measure. This Court has ruled on Initiative #88 and affirmed the Title as set by the Title Board. Proponents have obtained petition format approvals for Initiatives #85-#87, so that when this Court rules on those Initiatives, proponents can make decisions about how to move forward without waiting to get petition formats approved. There is no prohibition on obtaining

petition format approval for more than one ballot measure or before approval by this Court. *See Armstrong v. Davidson*, 10 P.3d 1278, 1281 (Colo. 2000).

Proponents have repeatedly represented to the Title Board and to this Court, and reiterate here, that they will only proceed to the ballot with one measure of the variations contained in Initiatives #85-#88, and they will not circulate petitions for more than one setback measure at any time. If after this Court rules on Initiatives #85-#87, Proponents determine that they will move forward with a measure other than Initiative #88, then they will withdraw Initiative #88 before commencing to circulate petitions on another measure. Proponents are not "playing a shell game," but are rather in compliance with section 1-40-107(4), C.R.S., because the titles and submission clause were fixed and determined per §1-40-106 and §1-40-107, C.R.S., prior to any petition circulation. *See Armstrong v. Davidson*, 10 P.3d at 1281. Rather, Proponents are merely attempting to work within the time constraints imposed by section 1-40-108, C.R.S., and time is running short.

Aside from the factual errors cited by Petitioners in support of their request for relief, Petitioners' contention that the Title Board erred by setting the Title for Initiative #88 is not supported by the plain language of the Titles for Initiatives #85-#88. Though each measure would create a statewide setback requirement for new oil and gas wells from occupied structures, the differing specifics of each

measure – the precise length of the setback, the inclusion or omission of a takings exclusion, and the waiver authorization – are spelled out prominently and clearly in each of the short Titles. None of the Titles read the same – each clearly "distinguish[es] between overlapping or conflicting proposals." *In re Initiative Concerning "Fair Treatment II"*, 877 P.2d 329, 332 (Colo. 1994). Each Title "accurately reflect[s] the distinctions between the measures" and would enable the voter to readily distinguish between them. *In re Initiative for 2007-2008 #61*, 184 P.3d 747, 752 (Colo. 2008).

Finally, even were the Proponents to attempt to place more than one of these measures on the ballot – which they do not intend to do - "nothing prevents two conflicting amendments from being proposed or even adopted at the same election." *In re Initiative Concerning "Fair Treatment II",* 877 P.2d 329, 332 (Colo. 1994). "What is prohibited are conflicting ballot titles which fail to distinguish between overlapping or conflicting proposals." *Id.* These short and easily readable ballot titles clearly distinguish between the alternative measures.

Based on the foregoing, the Proponents respectfully request that the Court deny the Petition for Rehearing Concerning Proposed Initiative 2013-2014 #88.

Respectfully submitted this 19th day of June, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of June, 2014, a true and correct copy of the foregoing **RESPONDENTS/CROSS-PETITIONERS' RESPONSE TO PETITION FOR REHEARING CONCERNING PROPOSED INITIATIVE 2013-2014 #88** was filed and served via the Integrated Colorado Courts E-filing System, to the following:

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