

SUPREME COURT OF COLORADO
2 East 14th Avenue
Denver, CO 80203

DATE FILED: April 24, 2014 12:15 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 #89 (“Local
Government Regulation of
Environment”)

Petitioners: MIZRAIM S.
CORDERO AND SCOTT
PRESTIDGE

v.

Respondents: CAITLIN LEAHY
AND GREGORY DIAMOND

and

Title Board: SUZANNE STAERT;
DANIEL DOMENICO; and JASON
GELENDER

▲ COURT USE ONLY ▲

Attorneys for Petitioners:
Richard C. Kaufman, No. 8343
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Case No. 14SA 126

**PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE
SETTING BOARD CONCERNING PROPOSED INITIATIVE 2013-2014
#89 (“LOCAL GOVERNMENT REGULATION OF THE
ENVIRONMENT”)**

Mizraim S. Cordero and Scott Prestidge (“Petitioners”), registered electors of the State of Colorado, through their undersigned counsel, respectfully petition this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Initiative 2013-2014 #89 (“Local Regulation of the Environment”) (hereinafter “Proposed Initiative”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative #89

Caitlin Leahy and Gregory Diamond (collectively, “Proponents”) are the designated proponents of the 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 17, 2014. Proponents timely 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 meeting held April 3, 2014. On April 10, 2014 Petitioners timely filed a Motion for Rehearing pursuant to C.R.S. § 1-40-107(1)(a), alleging that the Proposed Initiative violated the single-subject requirement, and therefore the Title Board lacked jurisdiction to set title, and alternatively, that the title was confusing,

misleading and failed to reflect the true intent of the Proponents. The Title Board considered Petitioner's Motion at its April 16, 2014 meeting and denied the Motion.

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 the 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 for Rehearing and therefore this matter is properly before this Court.

GROUND FOR APPEAL

In violation of Colo. Const. art. V., § 1(5.5) and C.R.S. § 1-40-106.5 the Board set title for Proposed Initiative No. 89 despite the fact that it contains multiple, distinct and separate purposes that are not dependent upon or connected

with each other. The Title Board therefore lacked jurisdiction to set title. In the alternative, the Title Board set a title and submission clause that violates Colo. Const. art. V, § 1 and C.R.S. §§ 1-40-106, -107 insofar as it is confusing, misleading, and not reflective of the Proponents' intent. 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 right to regulation of the environment":
 - a. Establishing the "environment as common property of all Coloradans" in a new section 32 of the Colorado Constitution;
 - b. Establishes a public trust in the environment;
 - c. Establishes a new preemption order of authority whereby local governments may preempt statutes and regulations enacted by the General Assembly or regulations promulgated by executive branch agencies; and
 - d. Establishes a preemption of federal statutes by local government entities.
2. Contrary to the constitutional and statutory requirements for ballot titles as set forth in Colo. Const. art. V, § 1 and C.R.S. §§ 1-40-106, -107, the Board

set a title and submission clause that is confusing, misleading, and not reflective of the Proponents' intent insofar as it:

- a. Provides no definition of what constitutes the “environment” and therefore what is included in the term “common property”;
- b. Fails to define the term “fundamental” or what rights in the environment are “fundamental” or how these “fundamental” rights relate to other constitutional rights;
- c. Does not clearly define the public trust doctrine contained in the proposal in contrast to the common definition of the public trust doctrine recognized in some jurisdictions; and
- d. Fails to inform voters that the Proposed Initiative eviscerates the distinction between statutory and home-rule municipalities by effectively granting home-rule powers to all towns, cities, counties and other municipalities;
- e. Fails to define what state and local governments are to “conserve.”

PRAAYER FOR RELIEF

Petitioners respectfully request that this Court deny the title setting finding that the Title Board lacked jurisdiction to set title. Alternatively, Petitioners request that the Court determine that the title as set is confusing, misleading, and not reflective of the Proponents' intent and therefore remand the Proposed

Initiative to the Title Board with instructions to redraft the title to accurately and fairly represent the text of the Proposed Initiative.

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

RYLEY CARLOCK & APPLEWHITE

s/ Richard C. Kaufman
Richard C. Kaufman, No. 8343
Julie A. Rosen, No. 38070
Sarah Pallotti, No. 45007

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 #89 (“Local Government Regulation of the Environment”)** was filed via ICCES and served via email and U.S. Mail:

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s/ Ann Palius

DATE FILED: April 24, 2014 12:20 PM



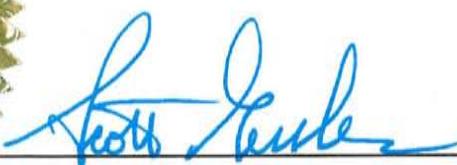
STATE OF COLORADO
DEPARTMENT OF
STATE
CERTIFICATE

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 #89 ‘Local Government Regulation of Environment’”

..... **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 17th day of April, 2014.



A handwritten signature in blue ink that reads "Scott Gessler".

SECRETARY OF STATE

RECEIVED

MAR 21 2014

2013-2014 #89 - FINAL

Colorado Secretary of State

SWARD 1:15PM

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

SECTION 1. In the constitution of the state of Colorado, amend article II to add the following:

Section 32. Environmental Rights (1) THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT COLORADO'S ENVIRONMENT IS THE COMMON PROPERTY OF ALL COLORADANS; CONSERVATION OF COLORADO'S ENVIRONMENT, INCLUDING ITS CLEAN AIR, PURE WATER, AND NATURAL AND SCENIC VALUES IS FUNDAMENTAL; AND COLORADO'S ENVIRONMENT SHOULD BE PROTECTED AND PRESERVED FOR ALL COLORADANS, INCLUDING GENERATIONS YET TO COME.

(2) THE PEOPLE OF THE STATE OF COLORADO, INCLUDING FUTURE GENERATIONS, HAVE A RIGHT TO COLORADO'S ENVIRONMENT, INCLUDING ITS CLEAN AIR, PURE WATER, AND NATURAL AND SCENIC VALUES. AS TRUSTEES OF THIS RESOURCE, THE STATE AND LOCAL GOVERNMENTS SHALL CONSERVE COLORADO'S ENVIRONMENT, INCLUDING ITS CLEAN AIR, PURE WATER, AND NATURAL AND SCENIC VALUES FOR THE BENEFIT OF ALL THE PEOPLE. THIS SECTION APPLIES TO THE STATE OF COLORADO AND 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.

(3) ALL PROVISIONS OF THIS SECTION OF ARTICLE II OF THE COLORADO CONSTITUTION ARE SELF-EXECUTING AND SEVERABLE. TO FACILITATE THE CONSERVATION OF COLORADO'S ENVIRONMENT, LOCAL GOVERNMENTS HAVE THE POWER TO ENACT LAWS, REGULATIONS, ORDINANCES, AND CHARTER PROVISIONS THAT ARE MORE RESTRICTIVE AND PROTECTIVE OF THE ENVIRONMENT THAN LAWS OR REGULATIONS ENACTED OR ADOPTED BY THE STATE GOVERNMENT. IF ANY LOCAL LAW OR REGULATION 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 #89¹

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

An amendment to the Colorado constitution concerning the creation of a public trust over Colorado's environment, and, in connection therewith, declaring that Colorado's environment is the common property of all Coloradans; specifying that the environment includes clean air, pure water, and natural and scenic values; requiring state and local governments, as trustees, to conserve the environment; and declaring that if state or local laws conflict the more restrictive law or regulation governs.

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 the creation of a public trust over Colorado's environment, and, in connection therewith, declaring that Colorado's environment is the common property of all Coloradans; specifying that the environment includes clean air, pure water, and natural and scenic values; requiring state and local governments, as trustees, to conserve the environment; and declaring that if state or local laws conflict the more restrictive law or regulation governs?

*Hearing April 3, 2014:
Single subject approved; staff drafts amended; titles set.
Hearing adjourned 10:17 a.m.*

¹ Unofficially captioned “**Local Government Regulation of Environment**” 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 1:45 P.M.

BEFORE THE TITLE BOARD, STATE OF COLORADO

MOTION FOR REHEARING

IN RE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE SET FOR INITIATIVE
2013-14 #89

Petitioner, Douglas Kemper, a registered elector of the State of Colorado, by and through his counsel, Burns, Figa & Will, P.C., hereby requests a rehearing and reconsideration of the title and ballot title and submission clause (collectively the "Titles") set by the Title Board on April 3, 2014, for Initiative 2013-14 #89 (the "Initiative"), which would amend the Colorado constitution. Reconsideration is requested for the following reasons:

1. The Initiative and Titles do not conform to the single-subject requirements of Article V, Section 1(5.5) of the Colorado Constitution, and C.R.S. § 1-40-106.5.
2. The Title Board's chosen subject phrase is too broad and vague and would cause public confusion regarding the effect of a "yes/no" vote on the Initiative in violation of C.R.S. § 1-40-106.
3. The Titles fail to describe important aspects of the Initiative and are therefore misleading in violation of C.R.S. § 1-40-106.

THE INITIATIVE AND TITLES VIOLATE THE SINGLE SUBJECT REQUIREMENT

The Initiative violates the single subject requirements of Article V, Section 1(5.5) of the Colorado Constitution, and C.R.S. § 1-40-106.5, by having at least these three separate, distinct, and unrelated subjects:

1. The creation of a common property right to the environment, defined as consisting of "clean air, pure water, and natural and scenic values;"
2. The adoption of a form of public trust doctrine, which would create rights of the public inherently conflicting with current water appropriation rights vested under constitutional provisions; and
3. The imposition of local control over environmental regulations with the authority to supersede any less restrictive state environmental regulations.

A. Creation of a Common Property Right to the Environment

Section (1) of the Initiative declares that the environment, defined to include clean air, pure water, and natural and scenic values, “is the common property of all Coloradans.” Additionally, Section (1) proclaims that conservation of the environment is a “fundamental” right belonging to all Coloradans, including generations “yet to come.”

Taken alone, the Initiative’s definition of the environment extends its reach beyond a single subject by changing the legal relationship between Colorado’s citizens and each of the separate and distinct factors within the definition. Natural and scenic views, for instance, may already be preserved under Colorado law through the creation of conservation easements. *See COLO. REV. STAT. § 38-30.5-104.* Such easements are actual property interests in the land that may only be created by the record owner of the surface. *See id.* The Initiative’s creation of a fundamental right in natural and scenic views would subrogate the landowner’s property interest in these easements by transferring ownership of the preservation of scenic views to the public at-large without any compensation to the landowner.

B. Adoption of a form of Public Trust Doctrine

Section (2) restates the right of all Coloradans to the environment, and then proceeds to impose upon state and local governments a trusteeship over the environment for the benefit of the people. While the Initiative stops just short of using the phrase “public trust doctrine,” the effect of the Initiative’s language would impose just such a doctrine over the state’s water rights as well as other natural resources. The Titles recognize, in fact, that the Initiative concerns “creation of a *public trust* over the environment” (emphasis added).

In its traditional common law form, public trust doctrine declares that the state holds its navigable waters and lands underneath them in trust for the people. *See Ill. Cent. RR. Co. v. Illinois*, 146 U.S. 387, 452 (1892). Colorado has never adopted a public trust doctrine or applied such a doctrine to water rights within the state due to the express protection of private property rights contained in Article XVI of the Colorado constitution. *People v. Emmert*, 597 P.2d 1025, 1029-30 (Colo. 1979) (holding Colo. Const. Art. XVI, Section 5 does not impose a public trust but protects private property rights in appropriation of Colorado waters and ownership of adjoining lands). This is likely because of the adverse impacts that doctrine would have on existing water rights under the prior appropriation doctrine. *See* Gregory J. Hobbs, Jr. and Bennett W. Raley, *Water Rights Protection in Water Quality Law*, 60 U. Colo. L. Rev. 841, 855-56 (1989). The “Colorado Doctrine” of water rights developed out of the “imperative necessity” of water scarcity in the western region. *In re Title, Ballot Title, Submission Clause for 2011-12 No. 3*, 274 P.3d 562, 574 (Colo. 2012) (Hobbs, J., dissenting). The break from the common law was so complete in Colorado as to make “all surface water and groundwater in the state, along with the water-bearing capacity of streams and aquifers, a public resource dedicated to the establishment and exercise of water use rights created in accordance with applicable law.” *See, id.*, at 573-4.

By adopting a form of public trust doctrine, the Initiative would enact a constitutional provision in conflict with the prior appropriation doctrine, subrogating the rights of those who hold appropriative water rights from the state to the rights of the public to be managed restrictively by the state and local governments.¹ The Initiative would effectively dismantle water rights and water laws that have been held intact as a property rights regime based on Colorado's constitutional, statutory, and case law for more than 150 years.

C. Imposition of Local Control over Environmental Regulations with Authority to Supersede Any Less Restrictive State Environmental Regulations

Section (3) provides that local governments have the power to enact laws, regulations, ordinances, and charter provisions that are more restrictive and protective of the environment than those that are enacted or adopted by the state government. Further, Section (3) provides that any local law or regulation adopted pursuant to this power shall govern over any conflicting state law or regulation whenever the local law or regulation is more restrictive or protective. This "local control" theme is the primary subject of several other current proposed initiatives, apart from any consideration of a public trust.²

In Colorado, many local government bodies are merely subdivisions of the state and may not exercise any authority not delegated to them by the General Assembly. Even those local governments that adopt home rule charters are limited in authority to those issues solely of local concern. Also, many local governmental boundaries in Colorado overlap. The Initiative does not differentiate between or among the various local government entities that exist within the state; nor does it provide guidance with regard to the relationship those local governments would have with each other or with the state, except to require that any environmental law or regulation adopted by a local government would supersede against a less restrictive law or regulation adopted by the state. Such a rule would overturn the subordinate relationship currently held by local governments vis-à-vis the state, and potentially create chaos in the determination of which locally-adopted law or regulation would prevail if a conflict were to exist between two or more overlapping local governments.

¹ Previously proposed initiatives would have expressly adopted a "public trust doctrine" in the Colorado constitution provisions governing water, Art. XVI, Section 5. See *Kemper v. Hamilton*, 274 P.3d 562 (Colo. 2012); *MacRavey v. Hufford*, 917 P.2d 1277 (Colo. 1996); *MacRavey v. Hamilton (Public Rights in Water II)*, 898 P.2d 1076 (Colo. 1995); and *MacRavey v. Swingle*, 877 P.2d 321 (Colo. 1994).

² See, e.g., Initiatives 2013-14 Nos. 75, 82, 90, and 91.

THE THREE SUBJECTS ENCOMPASSED BY THE INITIATIVE ARE SEPARATE AND DISTINCT, AND
TITLES SHOULD NOT BE SET

A. The Initiative Contains Multiple Subjects That Are Unrelated but Combined for Improper Purposes

Even where two or more facets of an initiative are related, they must not be so different as to confuse the voters, or to pass one facet surreptitiously disguised by another. Multiple subjects within an initiative set up the kind of “logrolling” that the voters intended to prevent when adopting the 1994 single-subject constitutional requirement. *In re Title, Ballot Title, Submission Clause for 2009-10 No. 91*, 235 P.3d 1071, 1079 (Colo. 2010). A proposed initiative violates the single subject rule if its text “relate[s] to more than one subject” and has “at least two distinct and separate purposes which are not dependent upon or connected with each other.” *MacRavey v. Hamilton (Public Rights in Water II)*, 898 P.2d 1076, 1078-79 (Colo. 1995) (citing the single subject test of *People ex rel. Elder v. Sours*, 31 Colo. 369, 403 (1903), to analyze ballot initiatives). The Colorado Supreme Court held in 2007 that “[a]n initiative that joins multiple subjects poses the danger of voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision coiled up in the folds of a complex initiative. We must examine sufficiently an initiative's central theme to determine whether it contains hidden purposes under a broad theme.” *In re Title, Ballot Title and Submission Clause, for 2007-2008, #17*, 172 P.3d 871, 875 (Colo. 2007) (internal citations omitted).

Initiative 89 presents this danger of voter surprise and fraud posed by logrolling three hidden purposes presented under a broad theme of creating a public trust over the environment. At least two of those purposes have been pursued as separate subjects in separate recent ballot initiatives, and this Initiative seeks to “log-roll” by carrying support from those favoring the separate agendas of public trust and local control. Creating a common property right to the environment that eviscerates private property interests is not dependent upon or connected with the adoption of a form of public trust doctrine that subverts over 150 years of Colorado water law, and neither of these purposes is dependent upon or connected with the imposition of local control over environmental regulations that have the authority to supersede any less restrictive state environmental regulations. For these reasons, the Initiative fails to meet the single-subject requirement.

B. The Measure is So Vague That it is Impossible To Set A Title That Accurately Reflects the True Purpose of the Measure

The Title Board must examine an initiative's central theme “to determine whether it contains hidden purposes or incongruous measures under a broad theme.” *Gonzalez-Estay v. Lamm* (2005-06 #55), 138 P.3d 273, 279 (Colo. 2006). And as the Colorado Supreme Court has held that “water” was too broad a theme to satisfy the single-subject requirement, *Public Rights in Water II*, 898 P.2d 1076, 1080 (Colo. 1995), it follows that “public trust over Colorado's environment” is similarly too broad to encompass the three topics outlined above as contemplated by the single-subject requirement. The Title Board's chosen subject phrase in the

'Titles, "concerning creation of a public trust over Colorado's environment," is too broad and vague to state a single subject. It fails to encompass the measure's provisions that would substantially alter the relationship between local governments and the state, and those that would convert Colorado's environmental resources, including natural and scenic views and appropriative water rights, into "common property."

C. The Titles Fail to Describe Important Aspects of the Measure And Are Therefore Misleading

An initiative's ballot title and submission clause must "correctly and fairly express the true intent and meaning" of the measure. COLO. REV. STAT. § 1-40-106(3)(a). "[A] material omission can create misleading titles." *Garcia v. Chavez*, 4 P.3d 1094, 1098 (Colo. 2000). Here, the Initiative's title was set as follows:

An amendment to the Colorado constitution concerning the creation of a public trust over Colorado's environment, and, in connection therewith, declaring that Colorado's environment is the common property of all Coloradans; specifying that the environment includes clean air, pure water, and natural and scenic values; requiring state and local governments, as trustees, to conserve the environment; and declaring that if state or local laws conflict the more restrictive law or regulation governs.

The ballot title and submission clause were set as follows:

Shall there be an amendment to the Colorado constitution concerning the creation of a public trust over Colorado's environment, and, in connection therewith, declaring that Colorado's environment is the common property of all Coloradans; specifying that the environment includes clean air, pure water, and natural and scenic values; requiring state and local governments, as trustees, to conserve the environment; and declaring that if state or local laws conflict the more restrictive law or regulation governs?

As drafted, the Titles are misleading because they fail to describe at least two important aspects of the Initiative:

- (a) The Initiative's title and ballot title and submission clause improperly omit the Initiative's provision creating a fundamental right to conservation of the environment. (Init. #89, § (1)). This is a material omission of a key provision because a fundamental right is held to the highest level of scrutiny whenever a legislative body would attempt to alter or limit it in any way.
- (b) The Initiative's title and ballot title and submission clause improperly omit the Initiative's requirement to preserve the environment for future generations. (Init. #89, § (1)). This is a material omission of a key provision that establishes a vested property right in the preservation of the environment for all future generations—a novel interest in property otherwise unknown to the law.

For these reasons, the Titles do not conform to the statutory requirements of § 1-40-106(3)(c).

WHEREFORE, Petitioner Douglas Kemper respectfully requests a rehearing and reconsideration of the title and ballot title and submission clause set by the Title Board on April 3, 2014, for Initiative 2013-14 #89.

Respectfully submitted this 10th day of April, 2014.

BURNS, FIGA & WILL, P.C.

By:

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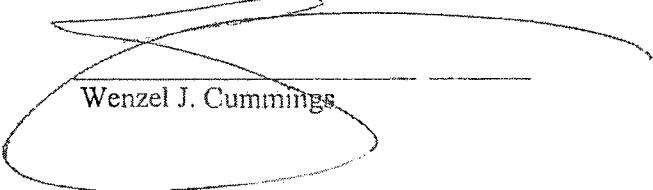
Attorneys for Petitioner
Douglas Kemper

CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing **MOTION FOR REHEARING** was served via electronic mail on this 10th day of April, 2014, as follows:

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Wenzel J. Cummings

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APR 10 2014

Colorado Secretary of State

S.WARD 3:40 P.M.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE
2013-2014 #89

MOTION FOR REHEARING

Registered electors, Mizraim S. Cordero and Scott Prestidge, through their legal counsel, Ryley Carlock & Applewhite, request a rehearing of the Title Board for Initiative 2013-2014 No. 89. 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 Title Board designated the title as follows:

An amendment to the Colorado constitution concerning the creation of a public trust over Colorado's environment, and, in connection therewith, declaring that Colorado's environment is the common property of all Coloradans; specifying that the environment includes clean air, pure water, and natural and scenic value; requiring state and local governments, as trustees, to conserve the environment; and declaring that if state or local laws conflict the more restrictive law or regulation governs.

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

Shall there be an amendment to the Colorado constitution concerning the creation of a public trust over Colorado's environment, and, in connection therewith, declaring that Colorado's environment is the common property of all Coloradans; specifying that the environment includes clean air, pure water, and natural and scenic values; requiring state and local governments, as trustees, to conserve the environment; and declaring that if state and local laws conflict the more restrictive law or regulation governs?

GROUND FOR RECONSIDERATION

I. THE INITIATIVE IMPERMISSIBLY CONTAINS MULTIPLE SUBJECTS IN VIOLATION OF THE COLORADO CONSTITUTION AND STATUTES.

The Colorado Constitution and statutes require that each initiative that proposes an amendment to the Constitution shall contain only one subject and that subject shall be clearly expressed in the title. *See Colo. Const. art. V., § 1(5.5); C.R.S. § 1-40-106.5; In re Title, Ballot Title, Submission Clause*, 898 P.2d 1076 (Colo. 1995). The Board set title for initiative No. 89 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 "environmental rights" the initiative actually includes the following several, unrelated subjects:

- (1) Establishes a public trust in the environment as the common property of the people of Colorado (#89, §1);
- (2) Establishes the environment as common property of all the citizens of Colorado (#89, §1);
- (3) Establishes a new preemption order of authority whereby local governments may preempt statutes and regulation enacted or promulgated by the state government (#89, §3);
- (4) Implies a preemption of federal clean air and clean water statutes by local governments.
- (5) Establishes a new legal doctrine of construction, separate and apart from preemption that requires, most likely, the courts to determine whether a local ordinance or state statute is more restrictive (#89, §3).

These subjects are not connected or interdependent and therefore the Title Board lacks jurisdiction to set a title.

II. THE INITIATIVE'S PROVISIONS ARE SO VAGUE THE BOARD CANNOT SET A TITLE THAT ENCOMPASSES AND REFLECTS THE PURPOSE OF THE PROPOSAL.

Colorado Revised Statutes §1-40-106(3)(c) requires the ballot title to accurately reflect the subject matter of an initiative to avoid confusion. The Title set for initiative 89 violates this statutory provision in the following ways:

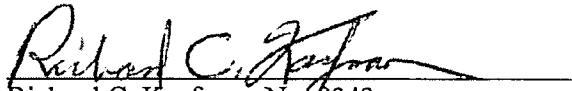
- (1) The measure purports to establish the “environment as the common property of all Coloradans.” However, the measure does not clearly define the terms “common property” and will lead to confusion because the public trust doctrine has traditionally been applied to lands submerged beneath tidal and navigable waterways.
- (2) The measure purports to assign the state and local governments as trustees of the “environment” but the title does not describe the rights each citizen of the state may have to enforce this proposal.
- (3) In paragraphs (1) and (2) of the proposal, the terms “natural and scenic values” are utilized and in paragraph (1) described as “fundamental,” as well as, “clean air” and “pure water.” The title does not include the word “fundamental” which will lead to misinformation and confusion as to which constitutional right takes precedence over others and whether “fundamental” ascribes more or less legal importance to these proposed rights as to other constitutional rights. The term “fundamental” is undefined and amorphous.

- (4) In paragraph (2) of the proposal, the term "conserve" is so broad it will lead to confusion among voters as to what the state and local governments are to conserve.

The language of the measure is so vague that no title can correctly and fairly express the true purpose of the measure. Therefore, the Title is confusing and does not meet the requirements of §1-40-106(3)(c).

Respectfully submitted this 10th day of April, 2014 by:

RYLEY CARLOCK & APPLEWHITE



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Ballot Title Setting Board

Proposed Initiative 2013-2014 #89¹

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

An amendment to the Colorado constitution concerning a public right to Colorado's environment, and, in connection therewith, declaring that Colorado's environment is the common property of all Coloradans; specifying that the environment includes clean air, pure water, and natural and scenic values and that state and local governments are trustees of this resource; requiring state and local governments to conserve the environment; and declaring that if state or local laws conflict the more restrictive law or regulation governs.

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

Shall there be an amendment to the Colorado constitution concerning a public right to Colorado's environment, and, in connection therewith, declaring that Colorado's environment is the common property of all Coloradans; specifying that the environment includes clean air, pure water, and natural and scenic values and that state and local governments are trustees of this resource; requiring state and local governments to conserve the environment; and declaring that if state or local laws conflict the more restrictive law or regulation governs?

*Hearing April 3, 2014:
Single subject approved; staff drafts amended; titles set.
Hearing adjourned 10:17 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 1:36 p.m.*

¹ Unofficially captioned "**Local Government Regulation of Environment**" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.