

<p>SUPREME COURT OF COLORADO 2 E. 14th Ave., 4th Floor Denver, CO 80203</p>	
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107 (2) Appeal from the Ballot Title Board</p>	<p>FILED IN THE SUPREME COURT</p> <p>APR 14 2016</p>
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2015- 2016 #93 (Threshold for Voter Approval of Initiated Constitutional Amendments)</p> <p>Petitioners: TIMOTHY MARKHAM and CHRIS FORSYTH</p> <p>v.</p> <p>Respondents: GREG BROPHY, DAN GIBBS</p> <p>and Title Board: SUZANNE STAIERT, FREDERICK YARGER, and JASON GELENDER</p>	<p>OF THE STATE OF COLORADO Christopher T. Ryan, Clerk</p> <p>▲ COURT USE ONLY ▲</p>
<p>Petitioner is proceeding pro se: Chris Forsyth 3155 Ingalls St. Wheat Ridge, CO 80214 Telephone: 303-238-8864 Email: forsythlaw@hotmail.com</p>	<p>Case Number: 2016SA103</p>
<p>PETITIONER FORSYTH'S OPENING BRIEF CONCERNING PROPOSED INITIATIVE 2015-2016 #93 (THRESHOLD FOR VOTER APPROVAL OF INITIATED CONSTITUTIONAL AMENDMENTS)</p>	

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ISSUES PRESENTED FOR REVIEW

1. Whether the Title Board had jurisdiction to set title when both proponents of the measure did not meet with the legislative research and drafting offices of the general assembly.
2. Whether the title for Initiative #93 is fair and accurate or is insufficient, misleading or contains an impermissible 'catch phrase.'

STATEMENT OF THE CASE

Initiative 2015-2016 #93 was filed by Brophy and Gibbs. A review and comment hearing was held before representatives of the Offices of Legislative Council and Legislative Legal Services. Brophy and Gibbs attended that meeting as proponents. App. 1. Thereafter, respondents submitted a final version of the proposed initiative to the Secretary of State for purposes of submission to the Title Board, of which the Secretary or his designee is a member.

A Title Board hearing was held on March 2, 2016, to establish the proposed initiative's single subject and to set a title. On March 9, 2016, petitioner filed a motion for rehearing alleging multiple grounds for the Title Board to deny a title or set a different title. The rehearing was held on March 16, 2016, at which time multiple people objected to the title on jurisdictional grounds, single subject and

that the title is misleading or confusing. The Title Board denied the motions for rehearing to set title or to cure deficiencies in the title it had set.

The title set for Initiative #93 is as follows:

An amendment to the Colorado constitution making it more difficult to amend the Colorado constitution by increasing the percentage of votes needed to pass a proposed constitutional amendment from a majority to at least fifty-five percent of the votes cast, unless the proposed constitutional amendment only repeals, in whole or in part, any provision of the constitution.

Forsyth timely filed a petition to review with the Supreme Court and this brief is in support of that petition.

ARGUMENT

I. THE TITLE BOARD DID NOT HAVE JURISDICTION TO SET TITLE BECAUSE THE PROPONENTS DID NOT MEET WITH THE DRAFTING AND LEGISLATIVE RESEARCH OFFICES OF THE GENERAL ASSEMBLY.

The Colorado Constitution reserves the right of the initiative to the people of the State of Colorado. Colo. Const. Art. V, Sec. 1, Para. (2). Indeed, only the "people of this state" have the power to alter the constitution. Colo. Const. Art. II, Sec. 2. The constitution specifically states that "the people reserve to themselves the **power to propose** laws and amendments to the constitution . . ." Colo. Const. Art. V, Sec. 1, Para. (2)(emphasis added).

The Colorado citizen proponents of an initiative must initially meet with the legislative research and drafting offices of the general assembly. Colo. Const. Art. V., Sec. 1., Para. (5). Then the citizen proponents must select designated representatives for the ballot title and petition process. C.R.S. § 1-40-104. In this case, Greg Brophy and Dan Gibbs are designated representatives. We know that because they declared themselves such and appeared at the Title Board hearings below. But they also appeared at the initial meeting with the legislative research and drafting offices of the general assembly.

In some instances, the proponents can most certainly be the designated representatives. There is nothing stopping a proponent from also serving as a designated representative. In this case, however, Brophy revealed that he is being paid for his services.

Brophy is a former legislator who wrote to the Independent Ethics Commission regarding whether he could approach or lobby former legislators regarding initiatives he's being paid to promote. App. 3. The letter was provided to the Title Board by Forsyth. The Independent Ethics Commission published a letter ruling regarding his request. App. 4. Therefore, it is documented in Brophy's letter to a state agency that he is getting paid for his services regarding this initiative.

The right of the initiative has been likened to the right to vote.

The right of initiative and referendum, like the right to vote, is a fundamental right under the Colorado Constitution. Likewise both the right to vote and right of initiative have in common the guarantee of participation in the political process. In light of the nature and seriousness of these rights, we have held that constitutional and statutory provisions governing the initiative process should be "liberally construed" so that "the constitutional right reserved to the people 'may be facilitated and not hampered by either technical statutory provisions or technical construction thereof, further than is necessary to fairly guard against fraud and mistake in the exercise by the people of this constitutional right.' " *Montero v. Meyer*, 795 P.2d 242, 245 (Colo.1990).

Matter of Title, Ballot Title and Submission Clause, and Summary for Proposed Initiated Constitutional Amendment 1996-3 Adopted on April 3, 1996, and Motion for Rehearing Denied on April 17, 1996, 917 P.2d 1274, 1276 (Colo. 1996).

“The relevant constitutional and statutory provisions implicitly require the establishment of safeguards to prevent fraud and corruption in securing a petition.” *McClellan v. Meyer*, 900 P.2d 24, 34 (Colo. 1995). In regards to the right to vote, it is unlawful to give or receive money in exchange for a vote. C.R.S. §§ 1-13-720, 721. Therefore, Brophy’s receipt of money for his services related to this initiative gives at a minimum the indicia of fraud. After all, the right to propose a change to the constitution is reserved solely to the people of Colorado. Colo. Const. Art. V, Sec. 1, Para. (2). The only people who have the right to vote in Colorado or propose changes in the law in Colorado are the citizens of Colorado. We don’t know who the proponent of this initiative is because we don’t know who is paying Brophy. Because he is receiving payment, however, we do know that he is not the

proponent. The Colorado Constitution requires that THE proponents meet with the legislative research and drafting offices of the general assembly: not the designated representatives. Colo. Const. Art. V., Sec. 1., Para. (5). The constitution is wise to have such a requirement, because it prevents the fraud of some out-of-state interest paying someone in Colorado to change Colorado's laws. The Colorado constitution requires the principal to appear at the initial meeting with the legislative research and drafting offices of the general assembly; not the agent of the proponent.

Brophy is merely the agent of the proponent.

Case law has already held that it is implicit that the constitutional provisions are to prevent fraud in the initiative process. *McClellan v. Meyer*, 900 P.2d 24, 34 (Colo. 1995). The title board does not have jurisdiction to set a title unless an initiative is proposed by a citizen of Colorado. Colo. Const. Art. II, Sec. 2; Art. V, Sec. 1, Para. (2). Yet when the title board in this case was confronted in this case with the fact that Brophy is being paid for his services, the Secretary of State's representative on the title board responded as follows:

I think the law is pretty clear that, you know, that any two citizens can bring an initiative and who's paying them or, you know, what's going on in the background isn't really of concern to the Board.

Tr. submitted by Forsyth, p. 14, ln. 5-9. It is implicit that part of the title board's purpose is to prevent fraud in the initiative process. *McClellan*, 900 P.2d at 34.

After all, the title board has no jurisdiction to set a title unless the proponent of an initiative is a citizen of Colorado. Colo. Const. Art. II, Sec. 2; Art. V, Sec. 1, Para. (2).

As it is unlawful to pay for a vote, it is fraudulent for someone to pay someone else to be a proponent of an initiative. The Colorado Constitution requires THE proponents to meet with the legislative research and drafting offices of the general assembly, not simply designated representatives. Colo. Const. Art. V., Sec. 1., Para. (5). We do not know who the proponent of this measure is because we don't know who is paying Brophy.

The title board failed in its implicit function to prevent fraud on the people of the state of Colorado. The title board failed to verify that the proponent of this initiative is a citizen of Colorado. Therefore, the title board lacked jurisdiction to set a title in this matter. The title board's actions should be reversed.

It is the title board's function to determine whether it has jurisdiction to set a title. That is why the title board addresses the single subject question before it addresses the language of the measure. Constitutional requirements are jurisdictional issues. *See In re Title, Ballot Title and Submission Clause for 2013-2014 #129*, 333 P.3d 101 (Colo. 2014). Yet at the rehearing below, the title board reversed the burden regarding a jurisdictional issue in this matter. Rather than

inquire of Brophy whether he is a Colorado citizen, the title board asked a leading question of Forsyth regarding Brophy's citizenship.

SUZANNE STAIERT: Well, you're not contesting that he's a citizen of Colorado.

CHRIS FORSYTH: I'm not. He's been a legislator. But is the (inaudible) right of the initiative up for sale? Is that what –

SUZANNE STAIERT: Well, is there any legal -- is there any prohibition you can point to that -- I mean, what if a corporation, who is not a citizen, wants to run an initiative –

CHRIS FORSYTH: In this case –

SUZANNE STAIERT: -- how would they get it done?

Tr. submitted by Forsyth, p. 6, ln. 7-18. It is the title board's function to ensure it has jurisdiction; not Forsyth's. Forsyth has no idea whether or not Brophy is a citizen of Colorado because he left the state after his service in the legislature. A jurisdictional issue cannot be waived. It is the title board that must verify that Brophy is a citizen of Colorado before it sets a title. Colo. Const. Art. II, Sec. 2; Art. V, Sec. 1, Para. (2). For instance, in California initiative proponents must sign a statement verifying that they are citizens of California. Calif. Elec. Code., Div. 9, Ch. 1, § 9001. The title board in this instance failed to verify that a citizen of Colorado is the proponent who is proposing a change to Colorado law. And, as set

forth above, Brophy is not the proponent of the initiative because he is getting paid for his services.

Another question was raised by the title board in its reference to corporations above. It is not necessary to address the corporations issue raised by the Secretary of State's representative on the title board to address the title at issue in this case. Nevertheless, because it was raised it will briefly be discussed.

As stated above, the fundamental right of the initiative has been likened to the fundamental right to vote. Only citizens can vote; not corporations. Colo. Const. Art. VII, Sec. 1. So, corporations do not have the right to pursue an initiative. Employees of that corporation, however, who are citizens of Colorado may propose changes to Colorado law. Colo. Const. Art. II, Sec. 2; Art. V, Sec. 1, Para. (2). But those employees cannot be under undue influence or have received money in exchange for the use of their fundamental right. See e.g. C.R.S. §§ 1-13-720, 721.

The Colorado Constitution requires transparency by requiring the proponents to be at the initial meeting. It prevents fraud by showing us exactly who is proposing the initiative. If a corporation wishes to propose changes to Colorado law, then the chief executive officer of that corporation needs to be the proponent. The highest officer in the corporation must own up to the fact that he or she wants

to use their fundamental right to benefit the corporation. Otherwise, the initiative has the indicia of fraud and the Colorado Constitution requires the prevention of fraud.

But we need not go that far to answer the question in this case. Brophy has chosen to sell out his fundamental right by being paid to allegedly be the proponent in this matter. Fundamental rights, however, are not for sale. The fundamental right of being an initiative proponent cannot be bought. The constitution is not for sale. The title board's determination must be reversed because the title board did not have jurisdiction to set a title in this case.

If the proponents wish to pursue this measure, he or she needs to stand up and own up to the change in law that he or she is pursuing. They simply need to re-file and meet with the legislative research and drafting offices of the general assembly. Colo. Const. Art. V., Sec. 1., Para. (5). The fact that we don't know who the proponents are is unconstitutional. *Id.* Putin? North Korea? ISIS? There are a myriad of possibilities. Just exactly who is it that would like to change Colorado law so much that they would pay someone to pretend they are the actual proponent?

In order to prevent fraud, the Colorado Constitution requires that the actual proponents of this measure reveal themselves. Because the title board failed to

verify that a Colorado citizen is the proponent of this measure, the title board lacked jurisdiction to set a title. This title board's decision should be reversed.

II. THE TITLE IS INSUFFICIENT, MISLEADING AND CONTAINS AN IMPERMISSIBLE CATCH PHRASE.

The Title Board is required to set a title that is fair, accurate and not misleading.

In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a "yes/for" or "no/against" vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly express the true intent and meaning thereof . . .

C.R.S. § 1-40-106 (3)(b). The action of the statutory board empowered to fix a ballot title and submission clause is presumptively valid. *Say v. Baker*, 322 P.2d 317 (1958). And those who contend to the contrary must show wherein the assigned title does not meet the statutory requirement. *Id.* A board acts wisely in refusing to use words in a title which would tend to color the merit of the proposal on one side or the other. *Id.*

"Catch phrases," or words which could form the basis of a slogan for use by those who expect to carry on a campaign for or against an initiated constitutional amendment, should be carefully avoided by the statutory board in writing a ballot

title and submission clause. *Id.*; *Spelts v. Klausling*, 659 P.2d 303 (Colo. 1982).

Where a catch phrase was used in the submission clause by the statutory board in fixing a submission clause and ballot title to a proposed constitutional amendment, the Supreme Court, on review, remanded the matter to the board with instruction to revise the submission clause by elimination of the catch phrase. *Henry v. Baker*, 354 P.2d 490 (1960); *Dye v. Baker*, 354 P.2d 498 (1960).

The title by the board leads to too many questions in this case. In the first line of the title it reads, “making it more difficult” More difficult for whom? More difficult than what? What is the support for such claim? Comparative advertising is an issue covered by the Federal Trade Commission and the Colorado Consumer Protection Act because it can be deceptive. In New York, two weight loss companies went to court over their comparative claims. The court ruled that there had to be clinical proof of such a claim before it could be made. *Ciba-Geigy Corp. v. Thompson Medical Co., Inc.*, 672 F.Supp. 679 (S.D.N.Y. 1985)(plaintiffs had no research to support their claims of comparison so advertising was false and deceptive). Likewise, the Colorado Court of Appeals, in analyzing the Colorado Consumer Protection Act, has ruled that a comparative claim must have some basis in reality and not be so over inflated that it is fictitious. *State ex rel. Woodard v. May Dept. Stores Co.*, 849 P.2d 802, 807 (Colo.App. 1992)

Therefore, comparative claims are advertising slogans and such slogans are to be avoided in ballot titles. *See Say*, 322 P.2d 317; *Spelts v. Klausling*, 649 P.2d 303 (Colo. 1982). The whole supposed single subject alleged in this matter – “making it more difficult to amend the Colorado constitution” – is an unsubstantiated, unfinished, misleading advertising slogan. Such phrase does not fairly describe the measure, its intent is to sell the measure. It is unfair and unacceptably deceptive to allow such a title to be placed on a ballot issue. Not only should an advertising slogan not constitute the single subject, it should not be anywhere in the title. *Id.* And eliminating the phrase "making it more difficult to amend the Colorado constitution by increasing" and replacing it with "to increase" removes the impermissible, unsubstantiated and deceptive advertising slogan.

The measure first states that it applies to “a proposed constitutional amendment” but then contains an exception regarding repeals. This is confusing and misleading. It would be less misleading if the exception was stated before the general rule. By stating it applies to “a proposed constitutional amendment” first, the title is misleading the public. Furthermore, does the general public really know what ‘repeal’ means? Such a word is not user-friendly to the general public. Repetition of the language from the initiative itself in the title and submission clause does not necessarily ensure that the voters will be apprised of the true intent

and purpose of the initiative. *In re Ballot Titles 2001-02 No. 21 & No. 22*, 44 P.3d 213 (Colo. 2002). It would be more helpful to voters to have the exception explained in more plain language. The title should be reversed and remanded back to the Title Board to construct a title that more fairly and accurately describes the initiative.

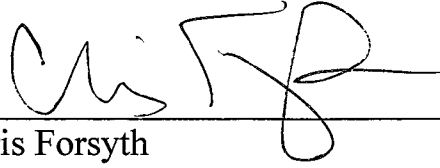
What this initiative really does is to allow 45.1% of Colorado's population to keep an amendment away from the citizens of Colorado even if 54.9% vote for the measure. It is a monumental shift that should be explained more clearly.

Finally, the title is to show the intent of the proponents in pursuing the measure. *See, Davidson v. Sandstrom*, 83 P.3d 648 (Colo. 2004). It is impossible to know the proponents' intent when we don't know who the proponent is. We know Brophy is not the proponent because he is being paid by someone else. If the proponents wish to pursue this measure, they should file a new draft and meet with the legislative research and drafting offices of the general assembly. Colo. Const. Art. V., Sec. 1., Para. (5).

CONCLUSION

For all the reasons stated above, the actions of the Title Board should be reversed.

Respectfully submitted this 14th day of April, 2016, by:

A handwritten signature in black ink, appearing to read 'Chris Forsyth', written over a horizontal line.

Chris Forsyth
3155 Ingalls St.
Wheat Ridge, CO 80214

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was delivered to the following on the 14th day of April, 2016:


Via hand-delivery

Supreme Court of Colorado
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Denver, CO 80203

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<p>SUPREME COURT OF COLORADO 2 E. 14th Ave., 4th Floor Denver, CO 80203</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107 (2) Appeal from the Ballot Title Board</p> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2015- 2016 #93 (Threshold for Voter Approval of Initiated Constitutional Amendments)</p> <p>Petitioners: TIMOTHY MARKHAM and CHRIS FORSYTH</p> <p>v.</p> <p>Respondents: GREG BROPHY, DAN GIBBS</p> <p>and Title Board: SUZANNE STAIERT, FREDERICK YARGER, and JASON GELENDER</p>	
<p>Petitioner is proceeding pro se: Chris Forsyth 3155 Ingalls St. Wheat Ridge, CO 80214 Telephone: 303-238-8864 Email: forsythlaw@hotmail.com</p>	<p>Case Number: 2016SA103</p>
<p>APPENDIX</p>	

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Initiatives Submitted for Review and Comment

Number	LCS Short Title	Constitutional / Statutory	Primary Proponent	Second Proponent	Date Submitted	Current Status
101	State Minimum Wage	Constitutional	Nancy Morehead 5492 S. Richfield Way Centennial, CO 3036901949	Dry Plam 789 Clarkson Street, Apt 802 Denver, CO 719-648-1349	02/18/2016	Awaiting Title Setting, Board Action
100	Medical Aid in Dying	Constitutional	Lance Wright 1960 Gilpin S. Gilpin Street Denver, CO 303-875-3228	Mercedes Aponte PO Box 40412 Denver, CO 303589-6666	02/15/2016	Title Denied
99	Primary Elections	Statutory	Kelly Brough 1445 Market Street Denver, CO	Joe Blake 475 17th Street, Suite 1550 Denver, CO 303-601-6000	02/05/2016	Title Denied
98	Primary Elections	Statutory	Kelly Brough 1445 Market Street Denver, CO	Joe Blake 475 17th Street, Suite 1550 Denver, CO 303-601-6000	02/05/2016	Title Set
97	Petition Signature Requirements for Initiated Constitutional Amendments	Constitutional	Gregory Brophy 8061 South Williams Circle Centennial, CO 970-630-0852	Dan Gibbs PO Box 5635 Breckenridge, CO 970-334-4707	02/02/2016	Title Set
96	Requirements for Initiated Constitutional Amendments	Constitutional	Gregory Brophy 8061 South Williams Circle Centennial, CO 970-630-0852	Dan Gibbs PO Box 5635 Breckenridge, CO 970-334-4707	02/02/2016	Title Set
95	Requirements for Initiated Constitutional Amendments	Constitutional	Gregory Brophy 8061 South Williams Circle Centennial, CO 970-630-0852	Dan Gibbs PO Box 5635 Breckenridge, CO 970-334-4707	02/02/2016	Title Set
94	Threshold for Voter Approval of Initiated Constitutional Amendments	Constitutional	Gregory Brophy 8061 South Williams Circle Centennial, CO 970-630-0852	Dan Gibbs PO Box 5635 Breckenridge, CO 970-334-4707	02/02/2016	Title Set
93	Threshold for Voter Approval of Initiated Constitutional Amendments	Constitutional	Gregory Brophy 8061 South Williams Circle Centennial, CO 970-630-0852	Dan Gibbs PO Box 5635 Breckenridge, CO 970-334-4707	02/02/2016	Title Set
92	Prohibit Restrictions on Firearms	Constitutional	Mike Speaker 53408 W. C. R. 78 Briggsdale, CO 970-518-6654	Momy Loftus 232 Chestnut Street Windsor, CO	02/02/2016	Title Denied
91	Medical Aid in Dying	Constitutional	Lance Wright 1960 Gilpin S. Gilpin Street Denver, CO 303-875-3228	Mercedes Aponte PO Box 40412 Denver, CO 303589-6666	01/28/2016	Review and Comment Hearing Held
90	Definitions in Bingo and Raffles Law	Statutory	Robin Jones 500 Rose Drive Colorado Springs, CO 719-290-5880	Pamela Jones 500 Rose Drive Colorado Springs, CO 719-505-8538	01/27/2016	Awaiting Title Setting Board Action
89	Voter Tax Credit	Constitutional	Jason Legg 2151 Quebec Street Denver, CO 307-761-3014	Scott Cadiz 1460 S. Birch Street Denver, CO 303-332-6531	01/26/2016	Review and Comment Hearing Held
88	Judicial Performance Commission	Constitutional	Peter Coulter 151 Summer Street, #654 Morrison, CO	Cliff Baptista 10545 Windhorse Lane Littleton, CO	01/22/2016	Review and Comment Hearing Held
87	Fiscal Impact Statements for Initiated Measures	Constitutional	Peter Moore 1099 18th Street, Suite 2600 Denver, CO	Robert Golden 2154 E. Commons Avenue, Suite 342 Centennial, CO	01/19/2016	Title Set
86	Constitutional Definition of Fee	Constitutional	Peter Coulter 151 Summer Street, #654 Morrison, CO	Cliff Baptista 10545 Windhorse Lane Littleton, CO	01/14/2016	Review and Comment Hearing Held
85	Constitutional Definition of Fee	Constitutional	Peter Coulter 151 Summer Street, #654 Morrison, CO	Cliff Baptista 10545 Windhorse Lane Littleton, CO	01/14/2016	Review and Comment Hearing Held
84	State Commission on Judicial Performance	Statutory	Peter Coulter 151 Summer Street, #654 Morrison, CO	Cliff Baptista 10545 Windhorse Lane Littleton, CO	01/14/2016	Review and Comment Hearing Held
83	Mandatory Setback for Oil and Gas Wells	Constitutional	Bruce Mason 320 20th Street Boulder, CO	Karen Dike 708 Hayden Street Longmont, CO 720-363-7119	01/08/2016	Title Set
82	Mandatory Setback for Oil and Gas Wells	Constitutional	Bruce Mason 320 20th Street Boulder, CO	Karen Dike 708 Hayden Street Longmont, CO	01/08/2016	Title Set

81	Mandatory Setback for Oil and Gas Wells	Constitutional	Bruce Mason 320 20th Street Boulder, CO	Karen Dike 708 Hayden Street Longmont, CO 720-363-7119	01/08/2016	Title Set
80	Mandatory Setback for Oil and Gas Wells	Constitutional	Bruce Mason 320 20th Street Boulder, CO	Karen Dike 708 Hayden Street Longmont, CO 720-363-7119	01/08/2016	Title Set
79	Mandatory Setback for Oil and Gas Development	Constitutional	Bruce Mason 320 20th Street Boulder, CO	Karen Dike 708 Hayden Street Longmont, CO 720-363-7119	01/08/2016	Title Set
78	Mandatory Setback for Oil and Gas Development	Constitutional	Bruce Mason 320 20th Street Boulder, CO	Karen Dike 708 Hayden Street Longmont, CO 720-363-7119	01/08/2016	Title Set
77	Mandatory Setback for Oil and Gas Development	Constitutional	Bruce Mason 320 20th Street Boulder, CO	Karen Dike 708 Hayden Street Longmont, CO 720-363-7119	01/08/2016	Title Set
76	Mandatory Setback for Oil and Gas Development	Constitutional	Bruce Mason 320 20th Street Boulder, CO	Karen Dike 708 Hayden Street Longmont, CO 720-363-7119	01/08/2016	Title Set
75	Local Government Authority to Regulate Oil and Gas Development		Bruce Mason 320 20th Street Boulder, CO	Karen Dike 708 Hayden Street Longmont, CO 720-363-7119	01/08/2016	Title Set
74	Prohibit Restrictions on Firearms	Constitutional	Mike Speaker 53408 W. C. R. 78 Briggsdale, CO 970-518-6654	Monty Loftus 232 Chestnut Street Windsor, CO	01/07/2016	Review and Comment Hearing Held
73	Public Accountability of Officials	Constitutional	Mike Spalding 18 Buckhorn Drive Littleton, CO 303-904-9174	David Onke 3308 S. Hannibal St. Aurora, CO 303-552-7236	12/24/2015	Title Set
72	Mandatory Setback for Oil and Gas Wells	Constitutional	Bruce Mason 320 20th Street Boulder, CO	Karen Dike 708 Hayden Street Longmont, CO 720-363-7119	12/22/2015	Awaiting Title Setting Board Action

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Greg Brophy
8061 S. Williams Cir
Centennial, CO 80122

Betty Gadison, Legal Assistant
Independent Ethics Commission

Dear Ms Gadison:

I am requesting a letter ruling from the Independent Ethics Committee on three questions.

I am being paid to affect public opinion on a taxation issue under consideration at the federal government level the tax issue is not under consideration at the Colorado General Assembly. I am also being paid to promote a citizen initiated ballot measure. I was a state senator until December 31st, 2014.

Given these facts, can I:

1. Contact a current state legislator and ask them to take specific action related to the federal taxation issue, e.g. ask a state representative to write a letter opposing the issue?
2. Contact a current state legislator and ask him/her to support the citizens' initiative which I am paid to promote?
3. If the answer to number 2, is no, can I present my position on the ballot initiative to citizens if a state legislator is present in the room?

Thank you for your consideration.

Sincerely,

Greg Brophy



William Leone, *Chair*
Bob Bacon, *Vice-Chair*
April Jones, *Commissioner*
Matt Smith, *Commissioner*
Bill Pinkham, *Commissioner*

Independent Ethics Commission
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Letter Ruling No. 16-01 (Former Legislator Advocating to a Current Legislator)

SUMMARY: It would not be a violation of Colorado Constitution Article XXIX for a former legislator to engage in the requested conduct.

I. Background

The Independent Ethics Commission ("IEC" or "Commission") received a request from a former state legislator asking for a letter ruling. The requestor served in the Colorado Legislature until December 31, 2014, and now is being paid to "affect public opinion." The requestor is not a registered lobbyist pursuant to C.R.S., § 24-6-301.

The requestor is seeking answers to the following three (3) questions:

- (1) May the requestor "contact the current state legislator and ask the legislator to take a specific action related to the federal taxation issue, e.g. ask a state representative to write a letter opposing the issue?"
- (2) May the requestor "[c]ontact a current state legislator and ask him/her to support the citizens' initiative which I am paid to promote?"
- (3) "If the answer to number 2, is no, can I present my position on the ballot initiative to citizens if a state legislator is present in the room?"

II. Jurisdiction

The IEC finds that a former state legislator, having been out of office less than 2 years is subject to the jurisdiction of the Commission. *See* Colo. Const. Art. XXIX, sec 4.

The Commission finds a Letter Ruling is appropriate in this case because the requestor is no longer a member of the General Assembly. *See* IEC Rules of Procedure 3(A)(7) and 5(B).

III. Applicable Law

Section 2 of Article XXIX (Definitions) reads in relevant part:

(5) "Professional lobbyist" means any individual who engages himself or herself or is engaged by any other person for pay or for any consideration for lobbying. "Professional lobbyist" does not include any volunteer lobbyist, any state official or employee acting in his or her official capacity, except those designated as lobbyists as provided by law, any elected public official acting in his or her official capacity, or any individual who appears as counsel or advisor in an adjudicatory proceeding.

Section 3 of Article XXIX (Gift ban) reads in relevant part:

(4) No statewide elected officeholder or member of the general assembly shall personally represent another person or entity for compensation before any other statewide elected officeholder or member of the general assembly, for a period of two years following vacation of office. Further restrictions on public officers or members of the general assembly and similar restrictions on other public officers, local government officials or government employees may be established by law.

IV. Discussion

The Commission addressed prohibited activities and professional lobbying in Position Statement 09-02. The Commission reiterated that Article XXIX, section 4 expressly prohibits elected office holders and members of the general assembly from personally representing persons or entities for compensation before statewide elected office holders or members of the general assembly for a period of two years after leaving office. Since the phrase "personally represent" was not defined in Article XXIX, the Commission went on to clarify that it "was intended to mean that elected office holders and members of the general assembly are prohibited from serving as **professional lobbyists** for two years following leaving office." *Id.* The Commission found "professional lobbyist" is any person who is required to register as a professional lobbyist under C.R.S., § 24-6-301." *Id.* With this background information in mind, the Commission turns to the requestor's questions.

As to the requestor's first question, the Commission finds the requestor may contact the current state legislator to ask the legislator to take a specific action related to the federal taxation issue, e.g., ask a state representative to write a letter opposing the issue. Since the requestor is not a registered lobbyist pursuant to C.R.S., § 24-6-301, the requestor is not prohibited from this activity.

With regard to the second question the Commission finds that the requestor is not prohibited from contacting a current state legislator to ask him/her to support the citizens' initiative which the requestor is being paid to promote. While the requestor has been out of office less than 2 years, the requestor is not a professional lobbyist and, therefore, not prohibited from engaging in this activity. This answer

makes the requestor's third question moot.

V. Conclusion

For the reasons noted above, it would not be a violation of Colorado Constitution Article XXIX for the requestor to engage in any of the noted activities listed above.

The Commission cautions public officials and employees that this opinion is based on the specific facts presented in the request and that different facts could produce a different result. The IEC, therefore, encourages individuals with particular questions to request fact specific advice for their circumstances through requests for advisory opinions or letter rulings.

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