

<p>SUPREME COURT OF COLORADO 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED: February 11, 2016 9:18 AM</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p> <hr/> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2015-2016 #63 (“Right to a Healthy Environment”)</p> <p>Petitioners: TRACEE BENTLEY AND STAN DEMPSEY</p> <p>v.</p> <p>Respondents: BRUCE MASON AND KAREN DIKE</p> <p>and</p> <p>Title Board: SUZANNE STAIERT; JASON GELENDER; AND FREDERICK R. YARGER</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Petitioner:</p> <p>Richard C. Kaufman, No. 8343 Matthew K. Tieslau, No. 47483 RYLEY CARLOCK & APPLEWHITE 1700 Lincoln Street, Suite 3500 Denver, Colorado 80203 Telephone: (303) 863-7500 Facsimile: (303) 595-3159</p>	<p>Case Number: 16SA_____</p>
<p>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2015-2016 #63 (“RIGHT TO A HEALTHY ENVIRONMENT”)</p>	

Tracee Bentley and Howard Stanley Dempsey (“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 forth in Initiative 2015-2016 #63 (“Right to a Healthy Environment”) (hereinafter “Proposed Initiative”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative #63

Bruce Mason and Karen Dike (“Proponents”) are the designated proponents of the Proposed Initiative. Proponents submitted a final version of the Proposed Initiative to the Secretary of State on January 8, 2016 for purposes of having the Title Board set title. The Secretary of State or his designee is a member of the Title Board. 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 January 20, 2016.

The Title Board considered and set title for the Proposed Initiative at its January 20, 2016 meeting. On January 27, 2016 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 contained within the Colo. Const. art. V., § 1(5.5) and C.R.S. § 1-40-106.5, and that the Proposed Initiative’s title did not accurately reflect the subject matter of the initiative as required by the Colorado Revised Statutes Section 1-40-106(3)(b) and (c) which rendered the title misleading. On January 26, 2015 a separate Petitioner, Douglas Kemper, filed a separate Motion for Rehearing pursuant to C.R.S. § 1-40-107(1)(a) alleging similar concerns. The Title Board considered both Petitioners’ Motions at its February 3, 2016 meeting. The Motions for

Rehearing were granted to the extent that the Board made limited changes to the title and submission clause but were denied in all other respects.

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 requirement set forth in section 1-40-107(2), Petitioners have attached the following documents certified by the Secretary of State: (1) the original version of the Proposed Initiative filed by the Proponents; (2) the original and amended ballot title set for this measure; (3) both Petitioners' Motions for Rehearing; and (4) the Title Board's ruling on the Motion for Rehearing. Petitioners respectfully submit that the Title Board erred in denying the Motion for Rehearing and therefore this matter is properly before this Court.

GROUNDS FOR APPEAL

The following is an advisory list of issues and grounds for appeal which will be discussed in full detail in Petitioner's brief:

A. The Initiative Impermissibly Contains Multiple Subjects in Violation of the Colorado Constitution and Statutes

The Title Board violated Colo. Const. art. V., § 1(5.5) and C.R.S. § 1-40-106.5 when it set title for the Proposed Initiative. These sections require that every constitutional amendment proposed by initiative be limited to a single subject which shall be clearly expressed in its title. The Proposed Initiative includes the following unrelated subjects:

- (1) Section 32(a)(3) rearranges the legal status of local governments in relation to Article XX and section 16 of Article XIV of the Colorado Constitution. This is a separate subject.

(2) Section 32(3) establishes a new “inherent, indefeasible, and inalienable right to a healthy environment” and, in the same subsection, characterizes it as a “fundamental right of natural persons,” and subsection (4) requires state and local governments to protect the right with “the highest priority” thereby establishing a priority ranking of fundamental rights natural persons have under the Colorado constitution and statutes. Protecting the environment, however defined, and creating a hierarchy of fundamental rights in natural persons are two independent separate subjects.

(3) Section 32(5) establishes a new preemption regime in two ways. That section allows local government charter provisions and ordinances to preempt state statutes, in large measure reversing the present preemption law; and second, it creates a new form of preemption based on the breadth of a particular ordinance or charter provision compared to a state statute. No longer is preemption based on express, implied, or operational conflict; but rather on which statute, ordinance, or charter provision is more restrictive.

(4) Section 32(6) establishes a separate right in both persons and governmental entities to bring an action at law or in equity for injunctive or declaratory relief. Requiring state and local governments to prioritize the protection of the environment and authorizing a new action at law or in equity for persons and governmental entities are two separate and independent subjects.

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

B. The Initiative’s Provisions are so Vague that the Title does not Encompass and Reflect the Purpose of the Proposal

The Title Board violated Section 1(5.5) of article V of the Colorado Constitution when it set title for the Proposed Initiative. This section requires that the ballot title set by the Board clearly

and correctly express the subject of the Initiative in order to avoid confusion and setting a misleading title and submission clause. The Proposed Initiative title fails to accurately reflect the subject matter such that it is materially misleading in the following ways:

- (1) Section 32(3) utilizes the term “fundamental right” which is also repeated in the ballot title. This term is catch phrase that creates a prejudice in favor of the initiative.
- (2) Section 32(4) prioritizes the right to a healthy environment in a manner that is vague and misleading with regard to other individual constitutional rights.
- (3) Section 32(6) states that an “aggrieved natural person or governmental entity” may bring an action to enforce the amendment. The title does not reflect the person or entity suing must be aggrieved. Therefore the title is vague and fails to communicate that requirement.
- (4) The title not only fails to reflect that section 32(6) provides for “punitive damages for reckless disregard” of this constitutional amendment, but also neither the initiative nor the title reflect what constitutes circumstances of “reckless disregard.” Therefore the title is vague and misleading.

All of the above issues demonstrate that the ballot title set by the Board is vague, confusing, and misleading and as such the Proposed Initiative should be void to the extent it is misleading.

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 as the Proposed Initiative contains multiple discrete subjects, and therefore title setting must be denied. Alternatively, Petitioners request that the Court determine that the title as set is confusing, misleading, and not clearly reflective of the subject of the Proposed Initiative and thus remand the Initiative to the Title

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

Respectfully submitted this 10th day of February 2016 by:

RYLEY CARLOCK & APPLEWHITE

By: *s/ Richard C. Kaufman*

Richard C. Kaufman, No. 8343

Matthew K. Tieslau, No. 47483

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Attorneys for Petitioners

CERTIFICATE OF SERVICE

I certify that on the 10th day of February, 2016, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2015-2016 #63 (“RIGHT TO A HEALTHY ENVIRONMENT”)** was electronically filed with the court via ICCES and served via U.S mail, postage prepaid, addressed to the following:

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s/Ann I. Palius _____



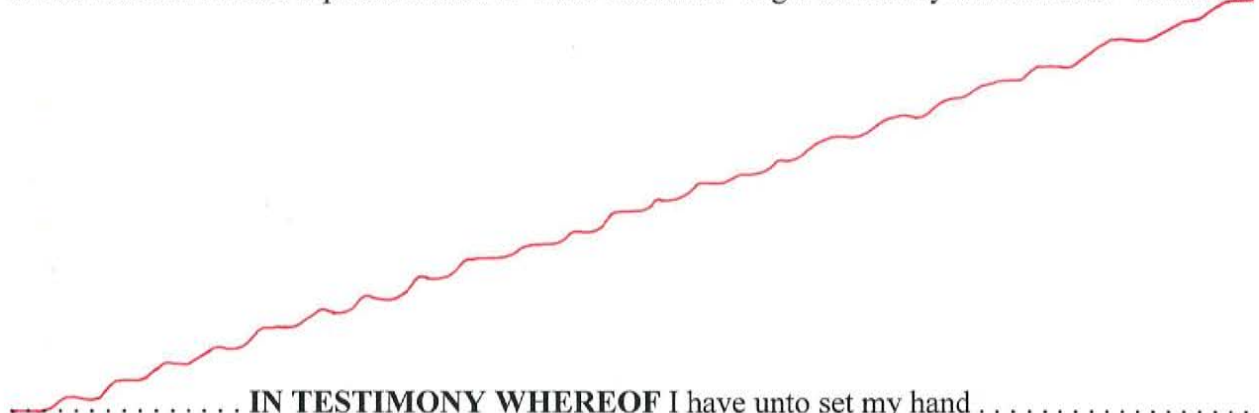
STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **WAYNE W. WILLIAMS**, 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, and the rulings thereon of the Title Board for Proposed Initiative "2015-2016 #63 'Right to Healthy Environment'"

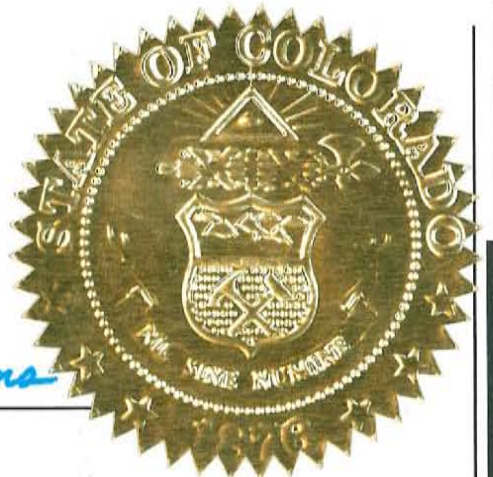


..... **IN TESTIMONY WHEREOF** I have unto set my hand

and affixed the Great Seal of the State of Colorado, at the
City of Denver this 9th day of February, 2016.

Wayne W. Williams

SECRETARY OF STATE



Ballot Title Setting Board

Proposed Initiative 2015-2016 #63¹

DATE FILED: February 11, 2016 9:20 AM

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

An amendment to the Colorado constitution concerning natural persons' fundamental right to a healthy environment and, in connection therewith, defining "healthy environment" as safe and sustainable conditions for human life, including healthy air, water, land, and ecological systems; requiring state and local governments to assign the highest priority to protecting a healthy environment; allowing local governments to enact laws that are protective of a healthy environment; stating that such a local law governs over a state law that is less protective of a healthy environment; allowing natural persons and governmental entities to sue to enforce the fundamental right to a healthy environment; and awarding reasonable costs of litigation upon determination that a violation has occurred.

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 natural persons' fundamental right to a healthy environment and, in connection therewith, defining "healthy environment" as safe and sustainable conditions for human life, including healthy air, water, land, and ecological systems; requiring state and local governments to assign the highest priority to protecting a healthy environment; allowing local governments to enact laws that are protective of a healthy environment; stating that such a local law governs over a state law that is less protective of a healthy environment; allowing natural persons and governmental entities to sue to enforce the fundamental right to a healthy environment; and awarding reasonable costs of litigation upon determination that a violation has occurred?

Hearing January 20, 2016:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 12:28 p.m.

Rehearing February 3, 2016:

Motion for Rehearing granted only to the extent that the Board made changes to the titles; denied in all other respects.

Hearing adjourned 11:23 a.m.

¹ Unofficially captioned "**Right to Healthy Environment**" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

RECEIVED S.WARD
JAN 26 2016 5:46 P.M.

Colorado Secretary of State
DATE FILED: February 11, 2016 9:20 AM

BEFORE THE TITLE BOARD, STATE OF COLORADO

MOTION FOR REHEARING

IN RE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE SET FOR INITIATIVE
2015-16 #63

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 "Title") set by the Title Board ("Board") on January 20, 2016, for Initiative 2015-16 #63 (the "Initiative"), which would amend the Colorado Constitution. Reconsideration is requested for the following reasons:

1. The Initiative and Title violate 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 does not correctly and fairly express the true intent and meaning of the Initiative because it omits two central features of the initiative, in violation of C.R.S. § 1-40-106(3)(b).

1. THE INITIATIVE AND TITLE 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, because it contains two separate, distinct, and unrelated subjects: (a) creation of a new fundamental right to a healthy environment for all natural persons in Colorado; and (b) overturning preemption doctrines by imposing local control over environmental regulations with the authority to supersede any less restrictive state environmental regulations.

Section (5) of the Initiative provides that local governments have the power to enact laws, regulations, ordinances, and charter provisions that are more protective of a healthy environment than those that are enacted or adopted by the state government. Further, Section (5) 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 protective. This "local preemption" theme is itself the primary subject of several other current and recent proposed initiatives that do not include any creation of environmental rights. *See, e.g.*, Initiatives 2015-16 #40, 64 and 75 (noting that Initiatives 64 and 75 were introduced by the same designated representatives as Initiative 63); 2013-14 Initiatives #75, 82 and 90-92. The stand-alone treatment of local preemption in these other proposed initiatives demonstrates that Section (5) is a separate, distinct and unrelated subject, coiled in the folds of a measure creating a fundamental right to a healthy environment, but lacking any necessary or proper connection to that subject.

2. THE TITLE DOES NOT CORRECTLY AND FAIRLY EXPRESS THE TRUE INTENT AND MEANING OF THE INITIATIVE BECAUSE IT OMITTS TWO KEY FEATURES OF THE INITIATIVE.

The Title omits any mention of two central features of Initiative 63: (a) the definition of a healthy environment, and (b) the provision for awarding punitive damages. Because these key features are omitted, the Title does not correctly and fairly express the true intent and meaning of the Initiative, in violation of C.R.S. § 1-40-106(3)(b).

A. **The Title Must Correctly and Fairly Express the True Intent and Meaning of the Initiative.**

An initiative's ballot title and submission clause must "correctly and fairly express the true intent and meaning" of the initiative. C.R.S. § 1-40-106(3)(b). To be correct and fair, the title must include the central features of the initiative. See *Matter of Title, Ballot Title & Submission Clause for 2013-2014 #90*, 328 P.3d 155, 162 (Colo. 2014); *Garcia v. Chavez*, 4 P.3d 1094, 1098 (Colo. 2000). It is critical that titles contain the central features of an initiative so that voters, "whether familiar or unfamiliar with the subject matter of a particular proposal, [can] determine intelligently whether to support or oppose" it. *Matter of Title, Ballot Title & Submission Clause for 2013-2014 #90*, 328 P.3d at 162.

The Board is charged with ensuring that the title is fair, clear, and accurate, and does not mislead the voters. See *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 258(A)*, 4 P.3d 1094, 1099 (Colo. 2000). Accordingly, in setting the titles, the Board must specifically "consider the public confusion that might be caused by misleading titles." *Id.* at 1098 (internal quotation marks omitted). The Board may not set titles that contain a "material and significant omission, misstatement, or misrepresentation." *Matter of Title, Ballot Title & Submission Clause, & Summary for 1997-98 No. 62*, 961 P.2d 1077, 1082 (Colo. 1998). Omitting a "key feature" of the initiative from a title is a "fatal defect" if that omission may cause confusion and mislead voters about what the initiative actually proposes. *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 258(A)*, 4 P.3d at 1099.

B. **The Distinct Definition of "Healthy Environment" is a Central Feature of the Initiative.**

Initiative 63 includes a distinct definition of the phrase "healthy environment." Section (2) defines a "healthy environment" as "safe and sustainable conditions for human life, including healthy air, water, land, and ecological systems."

However, the Title for the Initiative omits this definition of "healthy environment." Instead, this defined phrase is repeated five times in the Board's Title without any indication of what the phrase means.

For an informed vote on the measure, voters will need to understand this definition because it is new, could be controversial, and will be a significant legal standard. *See Matter of Proposed Initiative On Parental Notification of Abortions For Minors*, 794 P.2d 238, 241 (Colo. 1990). This definition of "healthy environment" does not appear to follow any common dictionary definition of "healthy" or "environment." Nor is this definition, which includes the distinct concepts of both "safe" and "sustainable," a common and prevalent meaning for the phrase "healthy environment." Thus, voters will not be able to know the true intent and meaning of "healthy environment" as used in the Initiative without being made aware of this definition. *See id.*

This definition is a central feature of this Initiative, and is material to understanding most of the other provisions. Other sections in the Initiative, including the new fundamental right to this healthy environment, government protection priorities, and what violations can be the basis of a lawsuit, will turn on this definition. For example, Section (4) will require governments to assign the highest priority to protecting a healthy environment. In context, this would specifically mean protecting and prioritizing a "safe and sustainable" environment ahead of other concerns that could be related to the environment or health in other ways.

C. Punitive Damages is a Material Feature of the Initiative.

Section (6) of the Initiative authorizes lawsuits to enforce the fundamental right to a healthy environment, providing that prevailing parties may recover reasonable attorney fees and costs. Prevailing parties may also be awarded punitive damages, on a finding of reckless disregard.

While the Board's Title recognizes the Section (6) enforcement provision as a central feature, the Title omits mention of punitive damages. The Title mentions only reasonable costs of litigation.

Allowing punitive damages in addition to reasonable costs is a central and material feature of the Initiative. A potential award of punitive damages is separate from the reasonable costs of litigation, and is in addition to any award for such costs. The Colorado Supreme Court recognized that punitive damages are a "distinct form of damages." *Seaward Const. Co. v. Bradley*, 817 P.2d 971, 973 (Colo. 1991). Unlike other types of damage awards, punitive damages "punish the wrongdoer and deter similar acts." *Id.* at 975. They are not intended to be a reimbursement for reasonable attorney fees and costs, or compensation to cover the cost of a loss. *See id.* Additionally, punitive damages are available in Colorado only pursuant to a statute, or in this case, a constitutional amendment. *See id.* at 973. Thus, voters will not be able to know the true intent and meaning of Section (6) without knowing that punitive damages may be awarded.

D. The Title Omits these Central and Material Features of the Initiative.

The Title does not mention either the Section (2) definition of healthy environment or the Section (6) punitive damages provision. The Initiative's Title was set as follows:

An amendment to the Colorado constitution concerning natural persons' fundamental right to a healthy environment and, in connection therewith, requiring state and local governments to assign the highest priority to protecting a healthy environment; allowing local governments to enact laws that are protective of a healthy environment; stating that such a local law governs over a state law that is less protective of a healthy environment; allowing natural persons and governmental entities to sue to enforce the fundamental right to a healthy environment; and awarding reasonable costs of litigation upon determination that a violation has occurred.

Voters will not be able to vote intelligently based on this Title because it omits these two central features of the Initiative. From the Title, as now set, voters will have no way to anticipate what the definition of "healthy environment" includes, or does not include, or how this definition affects other provisions in the Initiative. Voters will also be unaware that defendants may face, or that prevailing parties may be entitled to, punitive damages, in addition to reasonable attorney fees and costs. *See In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 No. 258(A)*, 4 P.3d at 1099. Omitting these two central and material features will cause confusion and mislead voters, and is thus a fatal defect that must be corrected in an amended title.

By adding the short definition of a healthy environment, and the fact that punitive damages may be awarded, the Title will enable voters to determine intelligently whether to support or oppose the Initiative. *See Matter of Title, Ballot Title & Submission Clause for 2013-2014 #90*, 328 P.3d at 162. Adding these features will not make the title and submission clause overly lengthy or complicated. *See In re Title, Ballot Title & Submission Clause, & Summary for 1999-00 #£256*, 12 P.3d 246, 256 (Colo. 2000).

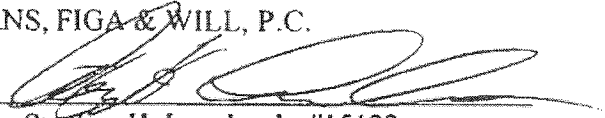
For these reasons, the title and ballot title and submission clause do not conform to the statutory requirements of § 1-40-106(3)(b), or to the requirements set by case law construing the statute.

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 January 20, 2016, for Initiative 2015-16 #63.

Respectfully submitted this 26th day of January 2016.

BURNS, FIGA & WILL, P.C.

By:


Stephen H. Leonhardt, #15122

Morgan L. Figuers, #46427

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Greenwood Village, CO 80111

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 U.S. mail on this 26th day of January 2016, as follows:

Martha Tierney, Esq.
Tierney Paul Lawrence
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Michelle G. Trujillo

RECEIVED

JAN 27 2016

10:37 A.M.

S.WARD

Colorado Secretary of State

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE 2015-2016 #63 DATE FILED: February 11, 2016 9:19 AM

MOTION FOR REHEARING

Registered electors, Tracee Bentley and Stan Dempsey, through their legal counsel, Ryley Carlock & Applewhite, request a rehearing of the Title Board for Initiative 2015-2016 No. 63. As set forth below, Ms. Bentley and Mr. Dempsey 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 January 20, 2015, the Title Board designated the title as follows:

An amendment to the Colorado constitution concerning natural persons' fundamental right to a healthy environment and, in connection therewith, requiring state and local governments to assign the highest priority to protecting a healthy environment; allowing local governments to enact laws that are protective of a healthy environment; stating that such a local law governs over a state law that is less protective of a healthy environment; allowing natural persons and governmental entities to sue to enforce the fundamental right to a healthy environment; and awarding reasonable costs of litigation upon determination that a violation has occurred.

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

Shall there be an amendment to the Colorado constitution concerning natural persons' fundamental right to a healthy environment and, in connection therewith, requiring state and local governments to assign the highest priority to protecting a healthy environment; allowing local governments to enact laws that are protective of a healthy environment; stating that such a local law governs over a state law that is less protective of a healthy environment; allowing natural persons and governmental entities to sue to enforce the fundamental right to a healthy environment; and awarding reasonable costs of litigation upon determination that a violation has occurred?

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, 974 P.2d 458, 463 (Colo. 1999) (a proposed initiative violates the single subject rule where it “has at least two distinct and separate purposes which are not dependent upon or connected with each other”). The Board set title for Initiative No. 63 despite the fact that it contains multiple distinct and separate purposes that are not dependent upon or connected with one another. Specifically, the initiative includes the following several, unrelated subjects:

- (1) Section 32(2)(a) provides a definition of healthy environment “including healthy air, water, land, and ecological systems.” The term “including” means that some but not all of the items covered are set forth. The title does not reflect that additional unstated subjects are part of this definition.
- (2) Section 32(a)(3) rearranges the legal status of local governments in relation to Article XX and section 16 of Article XIV of the Colorado Constitution. This is a separate subject which is not reflected in the title.
- (3) Section 32(3) establishes a new “inherent, indefeasible, and inalienable right to a healthy environment and, in the same subsection, characterizes it as a “fundamental right of natural persons,” and subsection (4) requires state and local governments to protect the right with ‘the highest priority’ thereby establishing a priority ranking of fundamental rights natural persons have under the Colorado constitution and statutes. Protecting the environment, however defined, and creating a hierarchy of fundamental rights in natural persons are two independent separate subjects.
- (4) Section 32(5) establishes a new preemption regime in two ways. That section allows local government charter provisions and ordinances to preempt state statutes, in large measure reversing the present preemption law; and second, it creates a new form of preemption based on the breadth of a particular ordinance or charter provision compared to a state statute. No longer is preemption based on express, implied or operational conflict; but rather on which statute, ordinance, or charter provision is more restrictive. *See Bd. Of Cnty. Comm’rs v. Bowen/Edwards Assocs., Inc.*, 830 P.2d 1045, 1048-49 (Colo. 1992).
- (5) Section 32(6) establishes a separate right in both persons and governmental entities to bring an action at law or in equity for injunctive or declaratory relief. Requiring state and local governments to prioritize the protection of the environment and authorizing a new action at law or in equity for persons and governmental entities are two separate and independent subjects.

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 AND MISLEADING THE BOARD CANNOT SET A TITLE THAT ENCOMPASSES AND REFLECTS THE PURPOSE OF THE PROPOSAL.

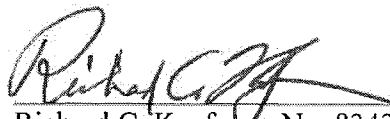
Colorado Revised Statute §1-40-106(3)(b) and (c) requires the ballot title to accurately reflect the subject matter of an initiative to avoid confusion over its true intent, purpose and meaning. *Aisenberg v. Campbell*, 987 P.2d 249, 253 (2000). The Title set for Initiative No. 63 violates this statutory provision in the following ways:

- (1) Section 32(2)(a) is vague and misleading because the items after the word term "including" are only a partial list of the subjects, some stated and others unstated, this section contemplates. The Title Board failed to mention that provision when setting the title. Therefore, the electorate will be unaware the initiative covers unstated subjects.
- (2) Section 32(3) utilizes the term "fundamental right" which is also repeated in the ballot title. This term is catch phrase that creates a prejudice in favor of the initiative.
- (3) Section 32(4) prioritizes the right to a healthy environment in a manner that is vague and misleading with regard to other individual constitutional rights.
- (4) Section 32(6) states that an "aggrieved natural person or governmental entity" may bring an action to enforce the amendment. The title does not reflect the person or entity suing must be aggrieved. Therefore the title is vague and fails to communicate that requirement.
- (5) The title not only fails to reflect that section 32(6) provides for "punitive damages for reckless disregard" of this constitutional amendment, but also neither the initiative nor the title reflect what constitutes circumstances of "reckless disregard." Therefore the title is vague and misleading.

Based on the foregoing, Ms. Bentley and Mr. Dempsey respectfully request the Title Board conduct a re-hearing on the title set for Initiative 2015-2016 #63.

Respectfully submitted this 27th day of January, 2016 by:

RYLEY CARLOCK & APPLEWHITE



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Ballot Title Setting Board

DATE FILED: February 11, 2016 9:19 AM

Proposed Initiative 2015-2016 #63¹

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

An amendment to the Colorado constitution concerning natural persons' fundamental right to a healthy environment and, in connection therewith, requiring state and local governments to assign the highest priority to protecting a healthy environment; allowing local governments to enact laws that are protective of a healthy environment; stating that such a local law governs over a state law that is less protective of a healthy environment; allowing natural persons and governmental entities to sue to enforce the fundamental right to a healthy environment; and awarding reasonable costs of litigation upon determination that a violation has occurred.

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 natural persons' fundamental right to a healthy environment and, in connection therewith, requiring state and local governments to assign the highest priority to protecting a healthy environment; allowing local governments to enact laws that are protective of a healthy environment; stating that such a local law governs over a state law that is less protective of a healthy environment; allowing natural persons and governmental entities to sue to enforce the fundamental right to a healthy environment; and awarding reasonable costs of litigation upon determination that a violation has occurred?

Hearing January 20, 2016:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 12:28 p.m.

¹ Unofficially captioned "**Right to Healthy Environment**" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

RECEIVED

JAN 08 2016

S. WARD
1:58 P.M.

Original

Initiative 2015-2016 #63

Colorado Secretary of State

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

DATE FILED: February 11, 2016 9:19 AM

SECTION 1. In the constitution of the state of Colorado, **add** section (x) to article II as follows:

Section (x). Right to a Healthy Environment

(1) THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT A HEALTHY ENVIRONMENT IS AN ESSENTIAL COMPONENT TO THE HEALTH, SAFETY AND WELFARE OF NATURAL PERSONS.

(2) Definitions

(a) FOR PURPOSES OF THIS SECTION, "A HEALTHY ENVIRONMENT" MEANS SAFE AND SUSTAINABLE CONDITIONS FOR LIFE, INCLUDING HEALTHY AIR, WATER, LAND, AND ECOLOGICAL SYSTEMS.

(b) FOR PURPOSES OF THIS SECTION, "LOCAL GOVERNMENT" MEANS ANY STATUTORY OR HOME RULE COUNTY, CITY AND COUNTY, CITY, OR TOWN LOCATED IN THE STATE OF COLORADO, NOTWITHSTANDING ANY PROVISION OF ARTICLE XX OF SECTION 16 OF ARTICLE XIV OF THE COLORADO CONSTITUTION.

(3) THE NATURAL PERSONS OF COLORADO, INCLUDING FUTURE GENERATIONS, HAVE AN INHERENT, INDEFEASIBLE, AND INALIENABLE RIGHT TO A HEALTHY ENVIRONMENT. PROTECTION OF THIS RIGHT IS HEREBY DEEMED TO BE A FUNDAMENTAL RIGHT OF NATURAL PERSONS OF COLORADO.

(4) STATE AND LOCAL GOVERNMENTS AND THEIR AGENCIES SHALL ASSIGN THE HIGHEST PRIORITY TO THE PROTECTION OF A HEALTHY ENVIRONMENT.

(5) ALL LOCAL GOVERNMENTS SHALL HAVE THE POWER TO ENACT LAWS, REGULATIONS, ORDINANCES AND CHARTER PROVISIONS THAT ARE PROTECTIVE OF A HEALTHY ENVIRONMENT. IF ANY STATE LAW OR REGULATION ADDRESSES THE SAME TOPIC AS ANY LOCAL LAW, REGULATION, ORDINANCE OR CHARTER PROVISION ENACTED OR ADOPTED PURSUANT TO THIS ARTICLE, THE LAW, REGULATION, ORDINANCE OR CHARTER PROVISION THAT IS MORE PROTECTIVE OF A HEALTHY ENVIRONMENT SHALL GOVERN.

(6) THE FUNDAMENTAL RIGHT TO A HEALTHY ENVIRONMENT MAY BE ENFORCED BY ANY AGGRIEVED PERSON OR GOVERNMENTAL ENTITY, IN AN ACTION AT LAW FOR DAMAGES OR IN AN ACTION IN EQUITY FOR INJUNCTIVE OR DECLARATORY RELIEF FOR ANY FAILURE TO ABIDE BY OR ENFORCE THE PROVISIONS OF THIS CONSTITUTIONAL RIGHT TO A HEALTHY ENVIRONMENT. IN ANY ACTION BY AN AGGRIEVED PERSON(S) OR LEGAL ENTITY FOR ENFORCEMENT OF THE FUNDAMENTAL RIGHT TO A HEALTHY ENVIRONMENT, PUNITIVE DAMAGES FOR RECKLESS DISREGARD RESULTING IN VIOLATIONS OF THE CONSTITUTIONAL PROVISIONS MAY BE AWARDED, AND A PREVAILING

AGGRIEVED PERSON(S) OR LEGAL ENTITY SHALL BE ENTITLED TO AND AWARD REASONABLE ATTORNEYS' FEES AND COSTS.

(7) ALL PROVISIONS OF THIS SECTION OF ARTICLE II OF THE COLORADO CONSTITUTION ARE SELF-EXECUTING AND SEVERABLE. THIS SECTION APPLIES TO THE STATE OF COLORADO AND TO EVERY COLORADO CITY, TOWN, COUNTY, CITY AND COUNTY, AND SPECIAL DISTRICT, NOTWITHSTANDING ANY PROVISION OF ARTICLE XX OR SECTION 16 OF ARTICLE XIV OF THE COLORADO CONSTITUTION.