

FILED IN THE
SUPREME COURT

<p>Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203</p> <hr/> <p>Original Proceeding Pursuant to § 1-40-107 (2), C.R.S.(2016) Appeal from the Ballot Title Board</p> <hr/> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2017-2018 #20 (“Severance Taxes on Oil and Gas”)</p> <p>Petitioner:</p> <p>Andrew J. O’Connor,</p> <p>v.</p> <p>Respondent:</p> <p>Chad Vorthman,</p> <p>and</p> <p>Colorado Ballot Title Setting Board:</p> <p>Suzanne Staiert, Shannon Eubanks and David Blake.</p>	<p>MAY 12 2017 DATE FILED: May 12, 2017</p> <p>OF THE STATE OF COLORADO Christopher T. Ryan, Clerk</p> <p>▲ COURT USE ONLY ▲</p>
<p>Attorney for Petitioner: Andrew J. O’Connor 1220 W. Devonshire Court Lafayette, CO 80026 Phone Number: (303) 499-4585 Fax Number: (303) 499-4585 Email: oconnorandrew@hotmail.com</p>	<p>Supreme Court Case No: 2017SA85</p>

PETITIONER’S OPENING BRIEF

Petitioner Andrew J. O’Connor, hereby submits his Opening Brief in this appeal:

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, I certify that:

A. The brief complies with C.A. R. 28(g) because it contains 3,401 words.

B. The brief complies with C.A. R. 28 (a)(7)(A) because each issue it contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority and (2) a citation to the precise location in the record and not to an entire document, where the issue was raised and ruled on.

/s/ Andrew J. O'Connor
Andrew J. O'Connor
Petitioner

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the Title Board erred when Suzanne Staiert, Deputy Secretary of State gave an interview to Denver television station KUSA, in which she publicly defamed Petitioner and falsely accused him of being a security threat thereby demonstrating bias and prejudice and failed to recuse herself from the rehearing.
2. Whether the Title Board erred and acted improperly when they moved the rehearing from the Secretary of State's Office to the Supreme Court Building based on falsely portraying Petitioner as security threat from the Petitioner thereby demonstrating bias and prejudice.
3. Whether the Title Board erred by denying Petitioners due process and a fair rehearing when they refused to consider the following filed pleadings: Petitioner's Objections to Moving Rehearing from Secretary of State's Office in Violation of Section 1-40-106 (1) C.R.S.; Motion for Telephone Hearing and Motion for Continuance and Motion to Dismiss Frivolous Motion for Rehearing and Request for Sanctions.
4. Whether the Title Board erred on April 28, 2017, when they voted that they lacked jurisdiction and refused to set title on Initiative 2017-2018 #20, despite the fact that on April 20, 2017, they voted in favor of jurisdiction to set title on the exact same Initiative.

STATEMENT OF THE CASE

Petitioners Andrew J. O'Connor and Mary E. Henry seek to circulate Initiative 2017-2018 #20, in order to obtain the required number of signatures to place the measure on the ballot. Initiative 2017-2018 #20, is a proposed severance tax on oil and gas extraction, elimination of the ad valorem tax deduction and stripper well exemption in order for oil and gas industry in Colorado to pay their fair share of taxes in line with surrounding States.

The Title Board conducted its initial public hearing on the Initiative on April 19, 2017 and accepted jurisdiction and set title on the Initiative. The Title Board found that the Initiative satisfied the single subject requirement of Article V, § 1(8) of the Colorado Constitution and C.R.S. § 1-40-105 (4) and set title. Respondent made specious arguments regarding lack of jurisdiction, substantive changes and misspellings, all of which were summarily rejected by the Title Board. On April 26, 2017, Respondent filed motion for rehearing which contained and repeated the same exact arguments that were summarily rejected by the Title Board. On April 28, 2017, the Title Board reversed itself and unanimously declined jurisdiction and refused to set title on the Initiative.

SUMMARY OF THE ARGUMENT

On April 28, 2017, the Petitioners were denied due process and a fair rehearing on Initiative 2017-2018 #20. The Title Board acted wrongfully and unconstitutionally including, but not limited to, acting in an arbitrary and capricious manner by moving the location of the rehearing from the Secretary of State's Office to the Supreme Court Building after Susan Straiert, Deputy Secretary of State defamed, publicly character assassinated and falsely portrayed Petitioner as a security threat thereby denying Petitioners due process and a fair and impartial rehearing. The aforementioned misconduct by Ms. Staiert and by implication the Title Board, violated the Colorado Rules of Professional Conduct and §1-40-106 (1) C.R.S. (2016) and said misconduct demonstrated bias and prejudice against Petitioners. The Title Board erred by reversing itself on April 28, 2017 and voted against jurisdiction and setting title despite the fact that they voted in favor of jurisdiction to set title on April 19, 2017 with the same exact wording.

ARGUMENT

I. Whether the Title Board erred when Suzanne Staiert, Deputy Secretary of State gave an interview to Denver television station KUSA, in which she publicly defamed Petitioner and falsely accused him of being a security threat thereby demonstrating bias and prejudice and then failed to recuse herself from the rehearing.

On April 25, 2017, Suzanne Staiert, Deputy Secretary of State and one of the three members on the Title Board, gave an interview to Denver television station KUSA, in which she falsely accused Petitioner of being dangerous and a security threat. Ms. Staiert told KUSA that the rehearing would have to be delayed in order to find a space in a secure building with metal detectors stating: *“From this point on, that will be a security obligation that we are obligated to take.”* (See copy of KUSA interview dated 4/25/17, attached and marked as Exhibit A).

At a minimum, Ms. Staiert should have recused herself from sitting on the Title Board on the rehearing after making improper public comments falsely portraying Petitioner as being dangerous and a security threat and accusing him of committing a crime and then demonizing Petitioner by moving the rehearing from the Secretary of State’s Office to the Supreme Court Building. Under the aforementioned circumstances, it was impossible for Petitioners to receive a fair and impartial rehearing. The Title Board acted wrongfully and unconstitutionally including, but not limited to, acting in an arbitrary and capricious manner by denying Petitioners due process, denying Petitioners a fair and impartial rehearing and by defaming and publicly character assassinating Petitioner. Ms. Staiert and by implication the Title Board violated the Colorado Rules of Professional Conduct and demonstrated bias and prejudice against Petitioners and reversing itself and voted jurisdiction and setting title on the Initiative despite the fact

that they voted in favor of jurisdiction to set title on April 19, 2017.

II. Whether the Title Board erred and acted improperly when they moved the rehearing from the Secretary of State's Office to the Supreme Court Building based on falsely portraying Petitioner as a security threat.

On April 26, 2017, Steven Ward with the Secretary of State's Office contacted Petitioner notifying him that Respondent filed a Motion for Rehearing and that the location of the rehearing was moved from the Secretary of State's Office to the Supreme Court Building. When Petitioner asked Mr. Ward for an explanation of why the location for rehearing was being moved from the Secretary of State's Office to the Supreme Court Building, he responded with only a vague reference to security concerns which he refused to clarify. Ms. Staiert's statements and actions demonstrated that she was biased and prejudiced against Petitioner and suspected him of committing a crime and clearly, Ms. Staiert's misconduct violated the Colorado Rules of Professional Conduct and §1-40-106 C.R.S. (2016).

Section 1-40-106 (1) C.R.S. states that public meetings are to be held before the Secretary of State's Office; consequently, it is a violation of Section 1-40-106 (1) C.R.S., to hold a public meeting involving rehearing on a ballot initiative at any other place than the Secretary of State's Office. The purpose of the initiative and referendum is to expeditiously permit free exercise of legislative powers by the people. *Matter of Title, Ballot Title & S. Clause*, 872 P.2d 689 (Colo. 1994)

It was a violation of Section 1-40-106 (1) C.R.S., to move a public meeting on a rehearing from the secretary of State's Office to the Ralph Carr Building, without reasonable notice or substantial justification because it deprived the Petitioners and public of reasonable notice of the change of venue and opportunity to attend and access

said public meeting; consequently, said public meeting must be held at the Secretary of State's Office, as it always has been pursuant to Section 1-40-106 (1) C.R.S. *Brownlow v. Wunch*, 103 Colo. 120, 83 P. 2d 775 (1938). Moving the rehearing from the Secretary of State's Office to the Ralph Carr Building substantially prejudiced the Petitioners and the public and deprived the public the opportunity to attend as there was substantial public interest in Ballot Initiative 2017-2018 #20. Also, by demonizing the Petitioner as a security threat and moving the location of the rehearing on the false pretense that Petitioner posed a security threat prejudiced the Petitioner's case and gave Respondent's a competitive advantage. The Secretary of State's Office refused to or was unable to articulate a credible reason or substantial justification for moving the rehearing from the Secretary of State's Office, where it has always been held, to the Ralph Carr Building and accordingly said action violated Section 1-40-106 (1) C.R.S.

III. Whether the Title Board erred by denying Petitioners due process and a fair rehearing when they refused to consider the following filed pleadings: Petitioner's Objections to Moving Rehearing from Secretary of State's Office in Violation of Section 1-40-106 (1) C.R.S.; Motion for Telephone Hearing and Motion for Continuance and Motion to Dismiss Frivolous Motion for Rehearing and Request for Sanctions.

On April 26, 2016, Petitioner filed: Objections to Moving Rehearing from Secretary of State's Office in Violation of Section 1-40-106(1) C.R.S.; Motion for Telephone Hearing; Motion for Continuance and Motion to Dismiss Frivolous Motion for Rehearing and Request for Sanctions. (See copies of pleadings attached and marked as Exhibits B, C, D and E, respectively).

On April 26, 2017, counsel for Respondents filed a frivolous Motion for Rehearing which was substantially frivolous, groundless and vexatious and counsel should have

been sanctioned accordingly, including, but not limited to dismissing Motion for Rehearing and awarding attorney's fees and costs pursuant to Section 13-17-101 C.R.S., provides for award of attorney's fees and costs when a claim or defense is substantially frivolous, groundless and vexatious and is not supported by credible evidence. Counsel for Respondent's Motion for Rehearing was basically an appeal of the Title Board action of April 7, 2017, granting jurisdiction and setting title on Ballot Initiative 2017-2018 #20. Respondent's counsel's Motion for Rehearing failed to set forth, in a manner consistent with Section 1-40-107, C.R.S., nor a coherent assertion of lack of jurisdiction and error by the Title Board supported by legal authority. As a result, it was appropriate to assess attorney's fees and costs against Respondent's counsel prosecuting the Motion for Rehearing. *Castillo v. Koppes-Conway*, 148 P.3d 289 (Colo. App. 2006).

Respondent's counsel's Motion for Rehearing was substantially frivolous, groundless and vexatious because it challenged the validity and constitutionality of Ballot Initiative 2017-2018 #20. Said Motion for Rehearing was filed in bad faith and is substantially frivolous, groundless and vexatious and counsel should have been sanctioned accordingly, including, but not limited to dismissing Motion for Rehearing and awarding attorney's fees and costs pursuant to Section 13-17-101 C.R.S., because counsel's Motion for Rehearing lacked substantial justification, was groundless, frivolous and vexatious and counsel should have been sanctioned accordingly. C.R.S. § 13-17-102; *Castillo v. Koppes-Conway*, 148 P.3d 289 (Colo. App. 2006). In fact, the Title Board should have considered the frivolous, groundless and vexatious nature of the pleading as well as the bad faith misconduct of counsel in telephoning the Secretary of State's Office and defaming Petitioner by falsely stating that he posed a security threat causing the location

of the rehearing to be moved under C.R.S. § 13-17-102 as follows:

- a. the extent of any effort made to determine the validity of any action or claim before the action or claim was asserted;
- b. the extent of any effort made after the commencement of an action to reduce the number of claims or defenses being asserted or to dismiss claims or defenses found not to be valid within an action; and
- c. the availability of facts to assist a party in determining the validity of a claim or defense. C.R.S. § 13-17-102; *Bilawsky v. Faseehudin*, 916 P. 2d 586 (Colo. App.1995).

Respondent's counsel acted in bad faith, deceptively and unethically in violation of Colorado Rules of Professional Conduct and should be sanctioned for making material misrepresentations in telephoning the Secretary of State's office and defaming Petitioner and falsely stating that he posed a security threat in order to discredit Petitioner and gain a competitive advantage and for filing a frivolous Motion for Rehearing. Counsel's misconduct is frivolous, groundless and vexatious. *Int'l Tech. Instruments, Inc. v. Eng'g Measurements, Inc.*, 678 P.2d 558 (Colo. App. 1983).

Respondent's counsel's aforementioned misconduct, material misrepresentations, pleadings and bad faith arguments made in defaming Petitioner and in the Motion for Rehearing are frivolous, groundless and vexatious and counsel should be sanctioned accordingly. A vexatious claim is one brought or maintained in bad faith to annoy or harass and may include conduct that is arbitrary, abusive, stubbornly litigious or disrespectful of truth. *Bockar v. Patterson*, 899 P.2d 233 (Colo. App. 1994).

Respondent's counsel's Motion for Rehearing and above referenced misconduct lacks substantial justification, is groundless, frivolous and vexatious pursuant to C.R.S. § 13-17-103 and was filed in violation of C.R.C.P., Rule 11. Respondent's counsel should be sanctioned and Motion for Rehearing should have been dismissed and an award of attorney's fees and costs should be have been entered in favor of Petitioners because of

counsel's violation of Rule 11 and imposition of sanctions are within the Title Board's discretion. *Carder, Inc., v. Cash*, 97 P.3d 174 (Colo. App. 2003).

IV. Whether the Title Board erred on April 28, 2017, when they voted that they lacked jurisdiction and refused to set title on Initiative 2017-2018 #20, despite the fact that on April 20, 2017, they voted in favor of jurisdiction to set title on the exact same Initiative.

On April 7, 2017, the Title Board acted properly in granting jurisdiction and setting title on Ballot Initiative 2017-2018 #20 and rejected Respondent's counsel's arguments that any substantive changes were made. In their Motion for Rehearing, Respondent's counsel improperly re-litigated issues that they lost on April 7, 2017. Counsel for Respondent's Motion for Rehearing was basically an appeal of the Title Board action of April 7, 2017, granting jurisdiction and setting title on Ballot Initiative 2017-2018 #20. Respondent's counsel's Motion for Rehearing failed to set forth, in a manner consistent with Section 1-40-107, C.R.S., nor a coherent assertion of lack of jurisdiction and error by the Title Board supported by legal authority. The Petitioners substantially complied with the requirements of Section 1-40-107, C.R.S., and the Title Board acted properly on April 7, 2017, by granting jurisdiction and setting title on Ballot Initiative 2017-2018 #20.

No discretion rests with administrative officials to pass on the validity of an act proposed by the people. *City of Rocky Ford v. Brown*, 133 Colo. 262, 293 P.2d 974 (1956). Furthermore, the Title Board's action on April 7, 2017, and Ballot Initiative 2017-2018 #20, are presumed to be valid by operation of law. In fact, a proposed ordinance is clothed with the presumption of validity and its constitutionality will not be considered by the courts by means of a hypothetical question, but only after enactment. *City of Rocky Ford v. Brown*, 133 Colo. 262, 293 P.2d 974 (1956).

Where changes in final version of initiative submitted to Secretary of State were in direct response to substantive questions and comments raised by directors of the legislative council and the office of legislative legal services, the proponents of the initiative were not required to resubmit the initiative to the directors. *In re Ballot Title 1999-2000 No. 256*, 12 P.3d 246 (Colo. 2000). On April 7, 2017, the Title Board acted properly in granting jurisdiction and setting title on Ballot Initiative 2017-2018 #20. Counsel's Motion for Rehearing failed to set forth, in a manner consistent with Section 1-40-107, C.R.S., It is well established in Colorado that it is in the interest of public policy for the Title Board to confer jurisdiction on citizen ballot initiatives. Provisions relating to the initiative should be liberally construed to permit, if possible, the exercise by the electors of this more important privilege. *Brownlow v. Wunch*, 103 Colo. 120, 83 P.2d 775 (1938); *Say v. Baker*, 137 Colo. 155, 322 P. 2d 317 (1958).

CONCLUSION

Petitioners respectfully request that the Court reverse the Title Board's denial of jurisdiction and refusal to set title on the Initiative and find that the actions of the Title Board were wrongful and unconstitutional and that the Title Board acted arbitrarily and capriciously by denying Petitioners due process and a fair and impartial rehearing, demonstrated bias and prejudice against Petitioners by the actions of Suzanne Staiert, Deputy Secretary of State in publicly accusing Petitioner of a crime, of being dangerous and a security threat and further demonizing Petitioners by moving the rehearing from the Secretary of State's Office to the Supreme Court Building and by refusing to consider Petitioners' motions and find that the above referenced actions and misconduct by Ms. Staiert and the Title Board, denied Petitioners a fair rehearing and due process and grant

any such further relief as the Court deems appropriate.

Respectfully submitted on May 11, 2017.

Respectfully submitted,
ANDREW J. O'CONNOR

A handwritten signature in black ink, appearing to read 'A. J. O'Connor', with a long horizontal flourish extending to the right.

By: /s/ Andrew J. O'Connor
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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 11th day of May 2017, a true and correct copy of **PETITIONER'S OPENING BRIEF** was emailed to the following:

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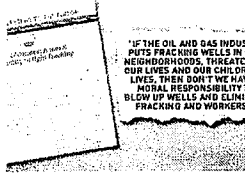


/s/ Andrew J. O'Connor

Andrew J. O'Connor

Man suggests blowing up wells, 'eliminating fracking wo Boulder Daily Camera editorial

Next with Kyle Clark and Brandon Rittiman, KUSA 10:07 PM, MDT April 25, 2017



BOULDER - Would you like to know what the fracking conversation in Colorado has come to? Well, you'll notice extra security at a state meeting this week to discuss an anti-fracking ballot question. That question is being pushed by a guy who says it's morally responsible to blow up oil wells and "eliminate" energy workers.

Call this observation biased, if you want, but if you're hinting at killing your opponents, you've probably lost the argument.

Anyway...

The Boulder Daily Camera [published a letter to the editor](http://www.dailycamera.com/letters/ci_30930903/andrew-j-oconnor-moral-responsibility-fight-fracking) (http://www.dailycamera.com/letters/ci_30930903/andrew-j-oconnor-moral-responsibility-fight-fracking) from a man named Andrew O'Connor, who finished his argument against fracking with this:

"If the oil and gas industry puts fracking wells in our neighborhoods, threatening our lives and our children's lives, then don't we have a moral responsibility to blow up wells and eliminate fracking and workers?"

"Those workers are the same people who will be in the room at the title-setting process," says Deputy Secretary of State Suzanne Staiert. She has to set up a meeting where O'Connor and the oil industry will both be there, arguing over a tax increase that O'Connor wants to put on the ballot.

That meeting would normally happen at a downtown Denver office building that houses the Secretary of State's office, but Staiert says they have to delay that meeting and find space in a secure building with metal detectors, because of the what O'Connor wrote.

"From this point on, that will be a security obligation that we're obligated to take," Staiert says.

Next talked to O'Connor by phone and said he was not advocating for blowing up people, just the oil wells.

"The only one who would argue that is some Republican, some conservative a**hole from oil and gas ... the Secretary of State is being ridiculous drama queens it doesn't mean that at all."

When he wrote about "eliminating" workers, O'Connor says he meant putting them out of work, not hurting them.

The Boulder Daily camera edited that line of letter, to remove the reference to blowing up things, and the opinion editor there says it was a mistake to publish it the first time. The editor's note says this:

Editor's note: This letter was edited to delete references that may have been construed to expressly advocate violence or property destruction. The Camera does not condone or endorse violence or property destruction of any kind. However, the letter presents a philosophical question the Camera believes is worthy of community conversation in the context of the ongoing discussion over fracking.

Editor Dave Krieger, who wrote a column

(http://www.dailycamera.com/columnists/cj_30938193/dave-krieger-editing-fracking-and-civil-disobedience) about this line slipping into the editorial section, also gave Next this statement:

The short version is I screwed up. I process a lot of reader submissions and the final few words of this one just got by me. When something doesn't register in your brain, it's hard to go back later and determine why. It just didn't. No excuses; I screwed up. I acknowledged the mistake in my column and said I regretted it profoundly, which I do.

As to leaving the edited version up, as I mentioned in the column, we took note of the fact that the state Senate considered a bill to increase penalties for tampering with oil and gas facilities. The Lafayette City Council considered an ordinance that would have made illegal acts in defense of the environment legal. With legislative bodies clearly anticipating such activities might take place, the question we wrestled with was whether we should prohibit people from discussing them in our open forum. The answer we arrived at was we should permit discussion of such activities on a philosophical level, but not threats to undertake them. Admittedly a tough line to draw, but when public officials are anticipating the possibility of such things, we couldn't see how it made sense to prohibit discussing them.

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COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR INITIATIVE 2017-2018 # 20

**OBJECTIONS TO MOVING REHEARING FROM SECRETARY OF STATE'S OFFICE
IN VIOLATION OF SECTION 1-40-106 (1) C.R.S.**

On behalf of Andrew J. O'Connor, co-sponsor of Ballot Initiative 2017-2018 #20, the undersigned counsel hereby submits this Objection to Moving Rehearing from Secretary of State's Office in violation of Section 1-40-106 (1), C.R.S., and as grounds therefore states as follows:

1. Section 1-40-106 (1) C.R.S. states that public meetings are to be held before the Secretary of State's Office; consequently, it is a violation of Section 1-40-106 (1) C.R.S., to hold a public meeting involving rehearing on a ballot initiative at any other place than the Secretary of State's Office. The purpose of the initiative and referendum is to expeditiously permit free exercise of legislative powers by the people. *Matter of Title, Ballot Title & S. Clause*, 872 P.2d 689 (Colo. 1994)
2. It is a violation of Section 1-40-106 (1) C.R.S., to move a public meeting on a rehearing to Ralph Carr Building, without reasonable notice or substantial justification because it deprives the co-sponsors and public of reasonable notice of the change of venue and opportunity to attend and access said public meeting; consequently, said public meeting must be held at the Secretary of State's Office, as it always has been pursuant to Section 1-40-106 (1) C.R.S. *Brownlow v. Wunch*, 103 Colo. 120, 83 P. 2d 775 (1938)
3. Moving the rehearing from the Secretary of State's Office to the Ralph Carr Building would substantially prejudice the co-sponsors and the public and deprive the public an opportunity to attend as there is substantial public interest in Ballot Initiative 2017-2018 #20.
4. The Secretary of State's Office refuses to or is unable to articulate a credible reason or substantial justification for moving the rehearing from the Secretary of State's Office, where it is always held, to the Ralph Carr Building and accordingly is in violation of Section 1-40-106 (1) C.R.S.
5. The co-sponsor on ballot initiative #20 Mary Henry works as a para-educator for Boulder Valley School District and does not finish her workday until 3:15pm; consequently, it is impossible for her to make the 12:00pm time on April 28, 2017. The co-sponsors respectfully request a rehearing time for Ballot Initiative 2017-2018 #20 be scheduled for 4:00pm on April 28, 2017, or, in the alternative, the rehearing for Ballot Initiative 2017-2018 #20 to be placed last on the agenda in order to allow co-sponsors time to drive from Lafayette to Denver.

6. The co-sponsors feel physically threatened by opposing counsel and the oil and gas industry and respectfully request that the rehearing be held via a telephone conference thereby insuring the personal safety of the co-sponsors.

Based upon the foregoing, Co-sponsor Andrew J. O'Connor, respectfully requests that rehearing be held at the Secretary of State's Office and that the re-hearing time for Ballot Initiative 2017-2018 #20 be scheduled for 4:00 pm on April 28, 2017, and/or be placed last on the agenda or in the alternative that the rehearing be conducted via telephone conference in order to insure the physical safety of the co-sponsors.

Respectfully submitted this 26th day of April, 2017.

/s/ Andrew J. O'Connor

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COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR INITIATIVE 2017-2018 # 20

MOTION FOR TELEPHONE HEARING

On behalf of Andrew J. O'Connor, co-sponsor of Ballot Initiative 2017-2018 #20, the undersigned counsel hereby submits this Motion for Telephone Hearing and as grounds therefore states as follows:

1. Section 1-40-106 (1) C.R.S. states that public meetings are to be held before the Secretary of State's Office; consequently, it is a violation of Section 1-40-106 (1) C.R.S., to hold a public meeting involving rehearing on a ballot initiative at any other place than the Secretary of State's Office. The purpose of the initiative and referendum is to expeditiously permit free exercise of legislative powers by the people. *Matter of Title, Ballot Title & S. Clause*, 872 P.2d 689 (Colo. 1994)
2. It is a violation of Section 1-40-106 (1) C.R.S., to move a public meeting on a rehearing to Ralph Carr Building, without reasonable notice or substantial justification because it deprives the co-sponsors and public of reasonable notice of the change of venue and opportunity to attend and access said public meeting; consequently, said public meeting must be held at the Secretary of State's Office, as it always has been pursuant to Section 1-40-106 (1) C.R.S. *Brownlow v. Wunch*, 103 Colo. 120, 83 P. 2d 775 (1938)
3. Moving the rehearing from the Secretary of State's Office to the Ralph Carr Building would substantially prejudice the co-sponsors and the public and deprive the public an opportunity to attend as there is substantial public interest in Ballot Initiative 2017-2018 #20.
4. The Secretary of State's Office refuses to or is unable to articulate a credible reason or substantial justification for moving the rehearing from the Secretary of State's Office, where it is always held, to the Ralph Carr Building and accordingly is in violation of Section 1-40-106 (1) C.R.S.
5. The co-sponsors feel physically threatened by opposing counsel and the oil and gas industry and respectfully request that the rehearing be held via a telephone conference thereby insuring the personal safety of the co-sponsors.

Based upon the foregoing, Co-sponsor Andrew J. O'Connor, respectfully requests that rehearing be held via telephone conference in order to insure the physical safety of the co-sponsors.

Respectfully submitted this 26th day of April, 2017.

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EXHIBIT D

COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR INITIATIVE 2017-2018 # 20

MOTION FOR CONTINUANCE

On behalf of Andrew J. O'Connor and Mary E. Henry, co-sponsors (hereinafter "co-sponsors") of Ballot Initiative 2017-2018 #20, the undersigned counsel hereby submits this Motion for Continuance and as grounds therefore states as follows:

1. On April 26, 2017, co-sponsors were notified of rehearing scheduled for April 28, 2017. Two days' notice is not reasonable or adequate notice for co-sponsors to prepare for re-hearing and severely prejudices co-sponsors.

2. The co-sponsor on ballot initiative #20 Mary Henry works as a para-educator for Boulder Valley School District and does not finish her workday until 3:15pm; consequently, it is impossible for her to make the 12:00pm time on April 28, 2017. The co-sponsors respectfully request a rehearing time for Ballot Initiative 2017-2018 #20 be scheduled for 4:00pm on April 28, 2017, or, in the alternative, the rehearing for Ballot Initiative 2017-2018 #20 to be placed last on the agenda in order to allow co-sponsors time to drive from Lafayette to Denver.

3. Section 1-40-106 (1) C.R.S. states that public meetings are to be held before the Secretary of State's Office; consequently, it is a violation of Section 1-40-106 (1) C.R.S., to hold a public meeting involving rehearing on a ballot initiative at any other place than the Secretary of State's Office. The purpose of the initiative and referendum is to expeditiously permit free exercise of legislative powers by the people. *Matter of Title, Ballot Title & S. Clause*, 872 P.2d 689 (Colo. 1994)

4. It is a violation of Section 1-40-106 (1) C.R.S., to move a public meeting on a rehearing to Ralph Carr Building, without reasonable notice or substantial justification because it deprives the co-sponsors and public of reasonable notice of the change of venue and opportunity to attend and access said public meeting; consequently, said public meeting must be held at the Secretary of State's Office, as it always has been pursuant to Section 1-40-106 (1) C.R.S. *Brownlow v. Wunch*, 103 Colo. 120, 83 P. 2d 775 (1938)

5. Moving the rehearing from the Secretary of State's Office to the Ralph Carr Building would substantially prejudice the co-sponsors and the public and deprive the public an opportunity to attend because there is substantial public interest in Ballot Initiative 2017-2018 #20.

6. The Secretary of State's Office failed to articulate a credible reason or substantial justification for moving the rehearing from the Secretary of State's Office, where it is always held, to the Ralph Carr Building and accordingly is in violation of Section 1-40-106 (1) C.R.S.

7. The co-sponsors feel physically threatened by opposing counsel and the oil and gas industry and has respectfully requested that the rehearing be held via a telephone conference in prior Motion for Telephone Hearing filed on April 26, 2017, thereby insuring the personal safety of the co-sponsors.

Based upon the foregoing, co-sponsors Andrew J. O'Connor and Mary E. Henry, respectfully request that Motion for Continuance be granted and that rehearing be rescheduled and held via telephone conference in order to insure the physical safety of the co-sponsors.

Respectfully submitted this 27th day of April, 2017.

/s/ Andrew J. O'Connor
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COLORADO TITLE SETTING BOARD

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR INITIATIVE 2017-2018 # 20

**MOTION TO DISMISS FRIVOLOUS MOTION FOR REHEARING AND REQUEST
FOR SANCTIONS**

On behalf of Andrew J. O'Connor and Mary E. Henry, co-sponsors of Ballot Initiative 2017-2018 #20, the undersigned counsel hereby submits this Motion to Dismiss Frivolous Motion for Rehearing and Request for Sanctions and as grounds therefore states as follows:

1. On April 26, 2017, counsel for Objector (hereinafter "counsel") filed a frivolous Motion for Rehearing which is substantially frivolous, groundless and vexatious and counsel should be sanctioned accordingly, including, but not limited to dismissing Motion for Rehearing and awarding attorney's fees and costs pursuant to Section 13-17-101 C.R.S.

2. Section 13-17-101 C.R.S., provides for award of attorney's fees and costs when a claim or defense is substantially frivolous, groundless and vexatious and is not supported by credible evidence. Counsel's Motion for Rehearing is basically an appeal of the Title Board action of April 7, 2017, granting jurisdiction and setting title on Ballot Initiative 2017-2018 #20. Counsel's Motion for Rehearing fails to set forth, in a manner consistent with Section 1-40-107, C.R.S., a coherent assertion of lack of jurisdiction and error by the Title Board supported by legal authority. As a result, it is appropriate to assess attorney's fees and costs against counsel prosecuting the Motion for Rehearing. *Castillo v. Koppes-Conway*, 148 P.3d 289 (Colo. App. 2006).

✓ 3. On April 7, 2017, the Title Board acted properly in granting jurisdiction and setting title on Ballot Initiative 2017-2018 #20. Counsel's Motion for Rehearing fails to set forth, in a manner consistent with Section 1-40-107, C.R.S., It is well established in Colorado that it is in the interest of public policy for the Title Board to confer jurisdiction on citizen ballot initiatives. Provisions relating to the initiative should be liberally construed to permit, if possible, the exercise by the electors of this more important privilege. *Brownlow v. Wunch*, 103 Colo. 120, 83 P.2d 775 (1938); *Say v. Baker*, 137 Colo. 155, 322 P.2d 317 (1958).

4. Counsel's Motion for Rehearing is substantially frivolous, groundless and vexatious because it challenges the validity and constitutionality of Ballot Initiative 2017-2018 #20. No discretion rests with administrative officials to pass on the validity of an act proposed by the people. *City of Rocky Ford v. Brown*, 133 Colo. 262, 293 P.2d 974 (1956).

✓ 5. The Title Board's action on April 7, 2017, and Ballot Initiative 2017-2018 #20, are presumed to be valid by operation of law. In fact, a proposed ordinance is clothed with the presumption of validity and its constitutionality will not be considered by the courts by means of a hypothetical question, but only after enactment. *City of Rocky Ford v. Brown*, 133 Colo. 262,

293 P.2d 974 (1956).

6. On April 5, 2017, Colorado Legislative Counsel and the Office of Legislative Legal Services filed Memorandum in order to review and comment on Proposed Ballot Initiative 2017-2018 #20, pursuant to Section 1-40-105 (1) C.R.S. Co-sponsors reviewed comments and worked with staff at the Title Board and made suggested edits and corrections and submitted final version. On April 7, 2017, the Title Board acted properly in granting jurisdiction and setting title on Ballot Initiative 2017-2018 #20 and rejected counsel's arguments that any substantive changes were made. Counsel is attempting to re-litigate issues in their Motion for Rehearing that they lost on April 7, 2017. Said Motion for Rehearing was filed in bad faith and is substantially frivolous, groundless and vexatious and counsel should be sanctioned accordingly, including, but not limited to dismissing Motion for Rehearing and awarding attorney's fees and costs pursuant to Section 13-17-101 C.R.S. (Where changes in final version of initiative submitted to secretary of state were in direct response to substantive questions and comments raised by directors of the legislative council and the office of legislative legal services, the proponents of the initiative were not required to resubmit the initiative to the directors. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).)

7. The Co-sponsors substantial complied with the requirements of Section 1-40-107, C.R.S., and the Title Board acted properly on April 7, 2017, by granting jurisdiction and setting title on Ballot Initiative 2017-2018 #20 and counsel's Motion for Rehearing lacks substantial justification, is groundless, frivolous and vexatious and counsel should be sanctioned accordingly. C.R.S. § 13-17-102; *Castillo v. Koppes-Conway*, 148 P.3d 289 (Colo. App. 2006).

8. This Title Board can and should consider the frivolous, groundless and vexatious and bad faith misconduct of counsel under C.R.S. § 13-17-102 as follows:

- a. the extent of any effort made to determine the validity of any action or claim before the action or claim was asserted;
- b. the extent of any effort made after the commencement of an action to reduce the number of claims or defenses being asserted or to dismiss claims or defenses found not to be valid within an action; and
- c. the availability of facts to assist a party in determining the validity of a claim or defense. C.R.S. § 13-17-102; *Bilawsky v. Faseehudin*, 916 P. 2d 586 (Colo. App.1995).

9. Counsel acted in bad faith, deceptively and unethically in violation of Colorado Rules of Professional Conduct and should be sanctioned for making material misrepresentations regarding mediation and for filing a frivolous Motion for Rehearing. Counsel's misconduct is frivolous, groundless and vexatious. *Int'l Tech. Instruments, Inc. v. Eng'g Measurements, Inc.*, 678 P.2d 558 (Colo. App. 1983).

10. Counsel's aforementioned misconduct, material misrepresentations, pleadings and bad faith arguments made in Motion for Rehearing are frivolous, groundless and vexatious and counsel should be sanctioned accordingly. A vexatious claim is one brought or maintained in bad faith to annoy or harass and may include conduct that is arbitrary, abusive, stubbornly litigious or

disrespectful of truth. *Bockar v. Patterson*, 899 P.2d 233 (Colo. App. 1994).

11. Counsel's Motion for Rehearing lacks substantial justification, is groundless, frivolous and vexatious pursuant to C.R.S. § 13-17-103 and was filed in violation of C.R.C.P., Rule 11. Counsel should be sanctioned and Motion for Rehearing should be dismissed and an award of attorney's fees and costs should be entered in favor of Co-sponsors because of counsel's violation of Rule 11 and imposition of sanctions are within the Title Board's discretion. *Carder, Inc., v. Cash*, 97 P.3d 174 (Colo. App. 2003).

Based upon the foregoing, Co-sponsors Andrew J. O'Connor and Mary E. Henry, respectfully requests that Motion for Rehearing be dismissed and that counsel be sanctioned including, but not limited to, an award of attorney's fees and costs.

Respectfully submitted this 26th day of April, 2017.

/s/ Andrew J. O'Connor
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