



# Colorado Supreme Court Approves Ballot Measure Language Restricting Fracking, Part Two

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In another “end run” around the state’s General Assembly, proponents of greater restrictions on oil and gas exploration in Colorado are again employing the initiative process, this time to authorize local governments to enact laws within their geographic boundaries more restrictive than state law, and even go so far as to potentially ban all exploration activity. Alongside a companion ballot language challenge allowing for more restrictive statewide setback requirements (the subject of a prior article, ([Colorado Supreme Court Approves Ballot Measure Language Restricting Fracking](#)), the Colorado Supreme Court ruled that two ballot initiatives permitting a state constitutional amendment allowing for more restrictive local control did not violate “the single subject rule.” Constitution, State of Colorado, Article V section 1(5.5) and section 1-40-106.5(1)(e), C.R.S. (2013).

Both initiatives contain substantially similar language, and are alternative versions of a single measure proponents seek to place on the ballot for the 2014 general election. The principal difference between the two initiatives is that Initiative #90 would give local governments the authority to regulate oil and gas development, including the ability to enact “limits,” whereas Initiative #93 would expand that authority to include the ability to enact “*prohibitions* or limits.” In other words, local governments would possess the authority to potentially ban all oil and gas exploration within municipal borders.

Both initiatives would apply to “every Colorado city, town, county, and city and county,” notwithstanding any provision of the Colorado home rule powers section of the Colorado Constitution. Similar to the three initiatives in the companion case, both initiatives state that the local laws to be enacted are not a taking of private property and do not require the payment of just compensation pursuant to sections 14 and 15 of article II of the Colorado Constitution.

Each initiative provides the rationale for the measure by setting forth certain findings and declarations, namely, the conduct of oil and gas development may impact public health, safety, welfare and the environment; any impacts are experienced most directly by local communities; and to preserve the public’s health, safety, welfare, and the environment, the people desire to expand the authority of local governments by vesting in them the right to regulate oil and gas development. Initiative #93 adds an additional declaration that the citizens of local communities have historically relied upon local governments to regulate local land use and to minimize potential land use conflicts between industrial development and residential development.

The Colorado Supreme Court held that each of the proposed initiatives contains one subject, i.e., the expansion of local governments’ authority to enact laws regulating oil and gas development that are more restrictive than state law. The Court also found that the titles set by the Title Board satisfy the “clear title” requirement of Colorado law because they are not misleading and fairly reflect the purpose of the proposed initiatives.

Both Justices who dissented in the companion case dissented from the majority’s affirmance of the Title Board’s decision here for the same reason. The single subject rule had been violated by attempting to connect the vesting of expansive local government authority to regulate oil and gas with the divestiture of property owners’ rights to just compensation. The dissent argued that the purposes of these two distinct subjects are not dependent upon or connected with each other. To read a copy of the Court’s decision, please click [here](#).

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