

# 1<sup>st</sup> Draft

## Initiative #75 Local Government Authority to Regulate Oil and Gas Development

1      **Amendment ? proposes amending the Colorado Constitution to:**

- 2            ♦ allow local governments to enact more restrictive regulations on oil and  
3            gas development within their boundaries than those imposed by the  
4            state, including limiting, delaying, and prohibiting such development.

5      **Summary and Analysis**

6      Amendment ? authorizes counties and municipalities to adopt laws regulating oil  
7      and gas development within their borders. Such activities include the exploration for,  
8      and the drilling, producing, and processing of oil, natural gas, or related products.  
9      Local governments are authorized to regulate all oil and gas activities, including the  
10     treatment and disposal of associated waste products. Amendment ? authorizes local  
11     governments to adopt local laws that are more restrictive than state laws; however,  
12     local governments may not adopt laws that are less restrictive. If a local government  
13     adopts laws that are more restrictive on oil and gas development than a state law, or  
14     that conflict with state laws, Amendment ? requires that the local law apply.

15     ***Oil and gas resources in Colorado.*** Geologic formations containing oil and  
16     natural gas are found in many areas of Colorado, with some formations underlying  
17     multiple local communities. Most of the development of these resources is  
18     concentrated in five counties, including Weld County — where most of the state's oil  
19     production is occurring — and Garfield, La Plata, Rio Blanco, and Las Animas  
20     counties, as well as portions of surrounding counties. Oil and gas properties are  
21     owned by private oil and gas companies, as well as the state of Colorado, the federal  
22     government, nonprofits, and private individuals and families. In Colorado, surface  
23     land and the underlying mineral resources may be owned by different parties. When  
24     this occurs, surface owners are required to provide mineral owners with reasonable  
25     access to their property.

26     ***State regulation of oil and gas.*** The state has been granted primary  
27     responsibility for overseeing and regulating the development of oil and gas in  
28     Colorado. The state was granted this authority, in part, to ensure that oil and gas  
29     resources are developed without waste and that the interests of mineral owners are  
30     protected. The courts have determined that towns and counties are prohibited from  
31     enacting oil and gas regulations that conflict with state regulations or prohibit oil and  
32     gas development.

33     The Colorado Oil and Gas Conservation Commission (COGCC) in the Colorado  
34     Department of Natural Resources establishes and enforces regulations on oil and gas  
35     operations in Colorado. Its members are appointed by the Governor and include three  
36     members with substantial experience in the oil and gas industry, a local government  
37     official, an environmentalist, an expert in soil conservation or reclamation, and an

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1 agriculturalist who is also a royalty owner. The COGCC is charged with fostering the  
2 responsible development of oil and gas resources in a manner that protects public  
3 health, safety, and welfare, including protection of the environment and wildlife. The  
4 COGCC is also responsible for protecting surface land owners from unreasonable  
5 damage caused by oil and gas development and ensuring that surface owners are  
6 consulted about the location of oil and gas facilities. Pursuant to state law, the  
7 COGCC may consult with the Colorado Department of Public Health and Environment  
8 (CDPHE) to protect the health, safety, and welfare of the general public in the conduct  
9 of oil and gas operations. The CDPHE also regulates air pollution, the discharge of  
10 water, and the disposal of other hazardous waste related to such operations.

11       ***Oil and gas extraction technologies and production increases.*** To improve  
12 production, oil and gas operators use hydraulic fracturing for most new wells and  
13 extend multiple wells in different directions from some well pads to minimize surface  
14 disturbances and reduce drilling costs. Hydraulic fracturing, or "fracking," involves  
15 injecting a mixture of water, chemicals, and sand into geologic formations containing  
16 oil or natural gas. This process fractures the formation and enhances the flow of oil or  
17 natural gas into the well. Although hydraulic fracturing has been used in Colorado  
18 since the 1940s, the technology has become more prevalent as an efficient means to  
19 access oil and gas in deep rock formations that were previously inaccessible. Wells  
20 are also drilled horizontally to improve their efficiency. Together, these technologies  
21 have led to substantial production increases in Colorado. For example, oil production  
22 more than doubled between 2008 and 2013 and doubled again between 2013 and  
23 2015, with much of the new production occurring near populated areas in northeastern  
24 Colorado. Today, nearly 90 percent of oil production and 30 percent of the natural  
25 gas production occurs in Weld County.  
26

27       ***Oil and gas production in Colorado.*** Colorado is currently ranked seventh  
28 among the states in domestic oil production and sixth in natural gas production and  
29 has over 53,000 active wells. Colorado's oil and gas industry generated about \$X  
30 billion in oil and gas production value in 20XX. According to the U.S. Bureau of Labor  
31 Statistics, the industry accounted for about xx,xxx direct jobs including drilling,  
32 extraction, and product transportation. This represents about x.x percent of total jobs  
33 in the state and about x.x percent of total wages and salaries.

*For information on those issue committees that support or oppose the  
measures on the ballot at the November 8, 2016, election, go to the  
Colorado Secretary of State's elections center web site hyperlink for ballot  
and initiative information:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

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## 1 Arguments For

2       1) Oil and gas development can have significant impacts on nearby residents and  
3 businesses, including increased noise, traffic, light pollution, and odors. Additionally,  
4 this development can raise concerns and uncertainty for nearby residents around air  
5 and water quality and general health impacts. Local governments are better able to  
6 adopt regulations for oil and gas operations that affect their residents. Current law  
7 provides local governments with zoning authority to address conflicting land uses such  
8 as residential communities and heavy industrial facilities. However, oil and natural gas  
9 development is one of the only heavy industrial activities that local governments are  
10 prevented from regulating through zoning. Amendment ? provides local governments  
11 consistent authority to regulate all activities that may impact their residents.

12      2) The state regulatory system has fallen short in addressing the concerns of  
13 residents, business owners, and others who live or work near oil and gas  
14 development. Due to the number of industry representatives and royalty owners on  
15 the COGCC, the current rule-making process provides too much weight to the  
16 preferences of oil and gas developers. It may be difficult for affected residents to  
17 participate in the rule-making process because it typically occurs in Denver and not in  
18 communities impacted by oil and gas development. Further, concerned citizens may  
19 not have the technical expertise or financial resources to adequately represent  
20 themselves in the state rulemaking process. State officials may have limited ties to  
21 affected communities, while local regulators who work and live in these communities  
22 are better positioned to address the concerns of their residents.

## 23 Arguments Against

24      1) Oil and gas development is important to Colorado's economy. Local limitations  
25 on oil and gas development could threaten both Colorado's economy and private  
26 property rights. This measure allows local governments to impose regulations or  
27 prohibitions on the industry that may make it more difficult and expensive to access  
28 the state's mineral resources, leading to decreased oil and gas production. This  
29 diminishes the benefits the oil and gas industry provides, including jobs, royalty  
30 payments, and tax revenue. Further, Amendment ? does not require that mineral  
31 owners be compensated if local governments make it more costly or impossible to  
32 develop their resources. This may lead to court challenges and require the state or  
33 local governments to compensate mineral owners for the value of their property loss.

34      2) The state's regulation of oil and gas development is meant to ensure the  
35 efficient use of the resource and to protect public health and the environment. Current  
36 law effectively ensures that the property interests of mineral owners are balanced  
37 against the rights of surface owners. Allowing local regulators to supercede state  
38 regulations may create a patchwork of inconsistent regulations. Moreover, most local  
39 governments do not have adequate resources to assume the technical aspects of  
40 regulating oil and gas, possibly increasing risks for their citizens. Local governments  
41 that seek to exercise greater control over oil and gas development may be required to

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1 hire more staff to handle the additional responsibilities. Such programs may be  
2 redundant to capabilities at the state level and waste government resources.

3 **Estimate of Fiscal Impact**

4 *(Please Note: A summary of the fiscal impact will be included in this space in the*  
5 *second draft of the analysis, and an official fiscal note will be prepared and placed on*  
6 *the web when the final blue book is sent to voters.)*