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COLORADO OIL AND GAS DEVELOPMENT

AND A POLITICALLY-CHARGED BALLOT PROPOSITION<sup>1</sup>

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Politics are local, so good policy must be deeply rooted in local context, be precisely written, acknowledge the need to be flexible or adaptable over time, and have a realistic chance of meeting its objectives. Hopefully, it also does not provide bad precedent for other jurisdictions. The oil and gas setback proposition now in front of voters in Colorado does not meet these basic tenets.

At a time of deep divisiveness in U.S. politics, both gubernatorial candidates in the state have spoken against the Proposition. Such unified cross-party agreement is rare in today's political climate, and speaks volumes about the proposed policy.

Colorado is a significant producer of both oil and natural gas, and has a long history of resource development. At the same time, the state is urbanizing and has a rapidly growing economy and population. This combination of factors has brought to the fore what is sometimes called the "social license to operate." Enter 2018 Colorado ballot Proposition 112.

The principal text of 112 states: "All new oil and gas development not on federal land must be located at least two thousand five hundred feet from an occupied structure or vulnerable area."

Thus, Proposition 112 proposes to increase setbacks for all new oil and gas development to between two-and-a-half and five times the distances established only a few years ago. Vulnerable areas cited include

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<sup>1</sup> The piece originally appeared on Forbes.com as part of the Baker Institute site.

<sup>2</sup> The views expressed here are the authors alone.

public open spaces, irrigation canals, reservoirs, lakes, streams (including intermittent ones), creeks, and any other area the state identifies as vulnerable.

Much of the Proposition's language is likewise vague or imprecise. That makes it both difficult to analyze, and more importantly, nearly impossible to interpret and implement effectively. This point will make the issue one that different political constituencies will invariably wield to political ends in perpetuity, which is a major strike against it being good policy.

While current limits discern between use-types—500 feet from homes and 1000 feet from schools—the new measure does not. For a sense of scale, a 500' setback includes about 18 acres and a 1000' setback includes about 72 acres; the new measure would encompass about 450 acres. The state's oil and gas regulator estimated that in Colorado's top five oil and gas producing counties more than 90% of non-federal land would be unavailable, an outcome that is essentially ruinous for Colorado's oil and gas industry.

In 2017, Colorado oil and natural gas producers paid \$496.7 million in property taxes to nearby local governments and school districts; in addition, severance taxes paid were as high as \$264.7 million per year. Moreover, the average wages in the oil and gas sector are higher than the statewide median, meaning if that sector is negatively impacted by passage of 112 the employment losses will have a deleterious impact on sales tax revenues. So, should 112 be passed, the revenue shortfalls will need to be managed lest the state budget become untenable. Thus, passing of 112 could set off a chain of tax and expenditure policy discussions rife with political sentiment, not to mention the employment impacts state-wide. Moreover, while these sorts of revenue numbers are well-analyzed and rather transparent, as are employment impacts of local oil and gas activity, there is almost no evidence that specific setback distances increase public health. Thus, the 2500' figure is untethered from sound science. That will need to be rectified in the future.

Under current law, the Colorado Oil and Gas Conservation Commission (COGCC) has the authority to modify setback requirements, which provides an avenue for specific restrictions to be developed should a preponderance of evidence justify them. So, existing law allows sound reasoning to intervene where concerns arise, i.e., it is flexible. But, the new proposal allows no such flexibility. In addition, and perhaps most significantly, while existing rules were formulated and adopted through a collaborative rule-making process, Proposition 112 has not similarly benefited from these essential discussions.

Colorado has been at the forefront of developing policies to regulate the oil and natural gas sector, and its existing regulatory approaches have served as a model for many other states. An example comes from the development of world-class regulations on methane emissions, which were designed over several years in a close partnership between government, industry, and environmental groups. Such a long-standing and balanced dialogue is a hallmark of Colorado, and an essential basis for the future.

That leadership should continue.

Proposition 112 is not-fit-for-purpose as it focuses bluntly on only one issue in a complex terrain. Designing any further robust regulations for oil and natural gas in Colorado would require additional research, and lots of talking among community, industry, academic, and political actors. Such conversations are already occurring at multiple locations around the country, which is an important point because no state policy in

## A BAD PROPOSITION | M. BAZILIAN & K.MEDLOCK III

the oil and gas arena exists in a vacuum; states can learn from and inform one another. These conversations should be allowed to inform policy accordingly.

At a very basic level, if anyone is told their kids are at risk from anything, they will oppose it until convinced otherwise. Any environmental or public health concern is important, and they must be discussed openly so that fears can be allayed. This is something the oil and gas industry, alongside state regulators and local community leaders, has done reasonably well in the Permian Basin. Make no mistake, there are still issues to be addressed—such as traffic concerns and issues related to water and infrastructure—but the dialogue is open and solutions are being sought.

Colorado should aim to continue to reap the economic benefits of being a resource-rich state, while satisfying and protecting its health, environmental, and safety requirements. Balancing these things is not an easy task, and will no doubt be tense at times. If Colorado’s track record serves as evidence, it is NOT impossible. But, dialogue is requisite.

Finally, while 112 is a statewide ballot issue, it may have far-reaching consequences as precedent. The U.S. has emerged as an important provider of natural gas to the world, a new trade pattern that sees U.S. supplies reaching over 28 different countries today. Colorado plays a role in these developments. 112 is a marker in an energy-producing state that threatens this new paradigm.

This also resonates beyond Colorado because natural gas will likely play a critical role in the global energy transition towards a low-carbon future. It has already proved to be critical in lowering U.S. emissions. It will also likely play an important role in developing economies, where roughly three billion people now suffer from poor quality energy services. These countries are trying to build vibrant and sustainable economies under exceedingly difficult circumstances—energy at scale is critical to those aspirations.

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