06SA63

ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), 1 C.R.S. (2006)
Appeal from the Title Setting Board

IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE, AND SUMMARY FOR 2005-2006, #75

Petitioners:

BENNETT S. AISENBERG and FEDERICO C. ALVAREZ, Objectors,

v.

Respondents:

JOHN K. ANDREWS, JR. and KATHLEEN A. LECRONE, Proponents,

and
Title Board:
WILLIAM A. HOBBS, JASON DUNN, and DAN CARTIN.

2006

Isaacson Rosenbaum P.C.
Mark G. Grueskin, #14621
Daniel C. Stiles, #35695
633 17th St., Ste. 2200
Denver, CO 80202
303-292-5656
Paid $75.00

For the Title Board:
John W. Suthers, Attorney General
Maurice G. Knaizer, Deputy Attorney General
#5264
Public Officials
State Services Section
(303)866-5380
No Fee: AG

Feb	22	Petition for Review of Final Action of Ballot Title setting Board ~~Concerning Proposed Initiative 2005-2006 #75 (Term Limits on Court of Appeals and Supreme Court Judges)~~ filed.	Mar	14	Petitioners' Opening Brief. Filed. ✓
				*	~~Answer Brief DUE: 04/03/06~~
				*	~~Reply Brief DUE: 04/14/06~~
			Mar	14	Transmission of Hearing Transcripts and Exhibits. Filed. ~~(filed by Petitioner)~~ ✓
~~Feb~~	~~23~~	~~ORDER – Petitioner to file an Opening Brief on or before March 14, 2006; Respondents file any Answer Brief on or Before April 3, 2006, Petitioner may file a Reply brief on or Before April 14, 2006.~~	Apr	3	Answer Brief of Title Board. Filed. ✓
				*	Reply Brief still DUE: 04/14/06
		FURTHER ORDERED – all briefs shall be filed and served upon opposing parties by hand delivery, or ~~through an overnight delivery service~~.	Apr	14	Petitioners' Reply Brief. Filed. ✓
			Apr	19	Circulated
			Apr	27	Submitted
	*	Opening Brief DUE:3/14/06	May	22	Action of the Ballot Title Setting Board affirmed, En Banc. Hobbs, J., Eid, J. does not participate.
	*	Answer Brief DUE: 4/3/06			
	*	Reply Brief DUE: 4/14/06			

SUPREME COURT, STATE OF COLORADO Court Address: 2 East 14th Avenue Denver, Colorado 80203	FILED IN THE SUPREME COURT FEB 22 2006 OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK
ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2006) Appeal from the Ballot Title Setting Board **Petitioners**: BENNETT S. AISENBERG and FEDERICO C. ALVAREZ, Objectors, v. **Respondents**: JOHN K. ANDREWS, JR. and KATHLEEN A. LeCRONE, Proponents, and **Title Board**: WILLIAM A. HOBBS, JASON DUNN, and DAN CARTIN	▲ **COURT USE ONLY** ▲
Attorneys for Petitioners: Mark G. Grueskin, #14621 Daniel C. Stiles, #35695 Isaacson Rosenbaum P.C. 633 17th Street, Suite 2200 Denver, Colorado 80202 Phone Number: 303-292-5656 Fax Number: 303-292-3152 E-mail: mgrueskin@ir-law.com; dstiles@ir-law.com	Case No.: 06SA63

PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2005-2006 #75 ("TERM LIMITS ON COURT OF APPEALS AND SUPREME COURT JUDGES")

Bennett S. Aisenberg and Federico C. Alvarez ("Petitioners"), being registered electors of the State of Colorado, through their undersigned counsel, respectfully petition this Court pursuant to § 1-40-107(2), C.R.S. (2006), to review the actions of the Ballot Title Setting Board with respect to the setting of the title, ballot title, and submission clause for proposed Initiative 2005-2006 #75 ("Term Limits on Court of Appeals and Supreme Court Judges").

I. Actions of the Ballot Title Setting Board

The Title Board conducted its initial public meeting and set titles for proposed Initiative 2005-2006 #75 on February 1, 2006. The Petitioners filed a Motion for Rehearing pursuant to § 1-40-107(1), C.R.S. (2005), on February 8, 2006. The Motion for Rehearing was heard at the next regularly scheduled meeting of the Title Board on February 15, 2006. At the rehearing, the Board granted in part and denied in part Petitioners' Motion. Petitioners hereby seek review of the final action of the Title Board with regard to proposed Initiative 2005-2006 #75 pursuant to § 1-40-107(2), C.R.S. (2006).

II. Issues Presented

I. Did the Title Board err by agreeing to set a ballot title, where the Board did not understand and the proponents could not explain the workings of this measure?

II. Did the Title Board err by failing to state in the ballot title that the proposed initiative repeals the existing ten-year terms for justices of the Supreme Court, as set forth in Article VI, section 7 of the Colorado Constitution?

III. Is "term limits" a political slogan or catch phrase that renders the ballot title unfair or misleading, given contemporary political debate on this issue, the expressed intent of the proponents, and titles set for other initiatives that dealt with this subject?

III. Supporting Documentation

As required by § 1-40-107(2), C.R.S. (2006), a certified copy of the Petition, with the titles and submission clause of the proposed constitutional amendment, together with a certified copy of the Motion for Rehearing and the rulings thereon, are submitted herewith.

IV. Relief Requested

Petitioners respectfully request this Court to reverse the actions of the Title Board with directions to decline to set a title and to return the proposed Initiative to the proponents.

Respectfully submitted this 22nd day of February, 2006.

ISAACSON ROSENBAUM P.C.

By: _____
Mark G. Grueskin, #14621
Daniel C. Stiles, #35695

ATTORNEYS FOR PETITIONERS

Addresses of Petitioners:

Bennett S. Aisenberg
310 Cook St.
Denver, Colorado 80206

Federico C. Alvarez
2315 Clermont St.
Denver, Colorado 80207

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February, 2006, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2005-2006 #75 ("TERM LIMITS ON COURT OF APEALS AND SUPREME COURT JUDGES")** was placed in the United States mail, postage prepaid, to the following:

Kathleen A. LeCrone
4371 S. Fundy Street
Centennial, Colorado 80015

John K. Andrews, Jr.
7156 S. Verbena Way
Centennial, Colorado 80112

Maurice G. Knaizer, Esq.
Deputy Attorney General
Colorado Department of Law
1525 Sherman Street, 5th Floor
Denver, Colorado 80203

Susan Tablack

STATE OF COLORADO

DEPARTMENT OF STATE

CERTIFICATE

I, GINETTE DENNIS, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the text, motion for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2005-2006 #75"...

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 17th day of February, 2006.

Ginette Dennis

SECRETARY OF STATE

PROPOSED CONSTITUTIONAL AMENDMENT FOR 2006 BALLOT
INITIATIVE NO. 75

PROPONENTS
John K. Andrews, Jr.
7156 S. Verbena Way
Centennial CO 80112
720 489 7700
andrewsjk@aol.com
Registered voter, Arapahoe County

Kathleen A. LeCrone
4371 S. Fundy St.
Centennial CO 80015
Registered voter, Arapahoe County

FINAL REVISION PER LEGISLATIVE STAFF REVIEW 1/20/06

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

Section 1. Article VI of the constitution of the state of Colorado is amended by the addition of a new section to read:

Section 27. Terms of office and term limits. TERMS OF OFFICE FOR COURT OF APPEALS AND SUPREME COURT JUDGES SHALL BE FOUR YEARS. AT EACH LEVEL, NO ONE SHALL SERVE MORE THAN THREE TERMS OF OFFICE. A PROVISIONAL TERM SHALL BE A TERM OF OFFICE. ANYONE WHO HAS SERVED TWELVE YEARS OR MORE AT ONE COURT LEVEL SHALL BE NOT ELIGIBLE FOR ANOTHER TERM AT THAT LEVEL.

Section 2. Repeal. Section 7 of Article VI of the constitution of the state of Colorado is repealed as follows:

Section 7. Term of office. ~~The full term of office of justices of the Supreme Court shall be ten years.~~

COLORADO TITLE SETTING BOARD

In re Title and Ballot Title and Submission Clause Set For Initiative 2005-06 #75

MOTION FOR REHEARING

On behalf of Bennett S. Aisenberg and Federico C. Alvarez, registered electors of the State of Colorado, the undersigned hereby moves for a rehearing of the title, ballot title and summary for Initiative 2005-06 #75, set at the Title Board hearing held on February 1, 2006. The Petitioners allege that the title set by the Board is misleading, inaccurate, and incomplete for the following reasons.

1. "Term limits" in the introductory clause of the ballot title is a political slogan, calculated to persuade voters to sign petitions and support the ballot measure.

2. The ballot title fails to state that a provisional term of office is counted as a full term of office.

3. The ballot title fails to define "provisional term of office."

4. The introductory clause of the ballot title erroneously states that this measure is limited to appellate court judges.

5. The ballot title fails to state that this measure restricts service of all judges to twelve years at any one court level.

6. The ballot title fails to state that the twelve-year ceiling on judicial service is retroactive and applies to all currently sitting judges and justices.

Respectfully submitted this 8th day of February, 2006.

ISAACSON ROSENBAUM P.C.

Mark G. Grueskin, #14621
Edward T. Ramey, #7648
633 17th Street, Suite 2200
Denver, CO 80202
Phone: 303-292-5656
Fax: 303-292-3152

Addresses of Objectors:

Bennett S. Aisenberg
310 Cook St.
Denver, CO 80206

Federico C. Alvarez
2315 Clermont St.
Denver, CO 80207

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February, 2006, a true and correct copy of the foregoing **MOTION FOR REHEARING** was placed in the United States mail, postage prepaid, to the following:

Kathleen A. LeCrone
4371 S. Fundy St.
Centennial, CO 80015

John K. Andrews, Jr.
7156 S. Verbena Way
Centennial, CO 80112

Eileen J. Ruggo

Ballot Title Setting Board

Proposed Initiative 2005-2006 #75[1]

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

An amendment to the Colorado constitution concerning term limits for appellate court judges, and, in connection therewith, providing four-year terms of office for justices of the supreme court and judges of the court of appeals, prohibiting a justice of the supreme court or a judge of the court of appeals from serving more than three terms, and making any justice or judge who has served more than twelve years at one court level ineligible for another term at that level.

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 term limits for appellate court judges, and, in connection therewith, providing four-year terms of office for justices of the supreme court and judges of the court of appeals, prohibiting a justice of the supreme court or a judge of the court of appeals from serving more than three terms, and making any justice or judge who has served more than twelve years at one court level ineligible for another term at that level?

Hearing February 1, 2006:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 4:10 p.m.

Hearing February 15, 2006:
At request of proponent, technical correction allowed in text of measure. (In Section 27, last sentence, changed "SHALL BE NOT ELIGIBLE" to "SHALL NOT BE ELIGIBLE".)
Motion for Rehearing granted in part to the extent Board amended titles; denied in all other respects.
Hearing adjourned 4:48 p.m.

[1] Unofficially captioned **"Term Limits on Court of Appeals and Supreme Court Judges"** by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

ORIGINAL

Certification of Word Count: 4,338

SUPREME COURT, STATE OF COLORADO Court Address: 2 East 14th Avenue Denver, Colorado 80203	FILED IN THE SUPREME COURT MAR 14 2006 OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK
ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2006) Appeal from the Ballot Title Setting Board **IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE, AND SUMMARY FOR 2005-2006, #75** **Petitioners**: BENNETT S. AISENBERG and FEDERICO C. ALVAREZ, Objectors, v. **Respondents**: JOHN K. ANDREWS, JR. and KATHLEEN A. LeCRONE, Proponents, and **Title Board**: WILLIAM A. HOBBS, JASON DUNN, and DAN CARTIN	▲ **COURT USE ONLY** ▲
Attorneys for Petitioners: Mark G. Grueskin, #14621 Daniel C. Stiles, #35695 Isaacson Rosenbaum P.C. 633 17th Street, Suite 2200 Denver, Colorado 80202 Phone Number: 303-292-5656 Fax Number: 303-292-3152 E-mail: mgrueskin@ir-law.com; dstiles@ir-law.com	Case No.: 06 SA 63

PETITIONERS' OPENING BRIEF

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STATEMENT OF ISSUES PRESENTED

Whether the ballot title is misleading because it does not communicate that justices and appellate judges now in office are retroactively subject to the limitations on terms established by this measure.

Whether the ballot title is misleading because it does not communicate that the initiative converts the terms served by all currently sitting justices and appellate judges to four-year terms.

Whether the ballot title is misleading because it implies that this initiative imposes, rather than changes, terms of office for justices on the Supreme Court and judges on the Court of Appeals

Whether "term limits" is a prohibited catch phrase, given the way it has been used by initiative proponents in political messages sent through so-called "push polls," on the Internet, and in the press.

STATEMENT OF THE FACTS

John K. Andrews, Jr. and Kathleen A. LeCrone ("proponents") are the two registered electors who have proposed Initiative 2005-2006 #75 which limits the terms of service for all justices on the Colorado Supreme Court and all appellate judges on the Court of Appeals. As submitted to the Secretary of State on January

20, 2006, this measure creates a new section 27 to Article XI of the Colorado Constitution that provides:

> Terms of office for the Court of Appeals and Supreme Court shall be four years. At each level, no one shall serve more than three terms of office. A provisional term shall be a term of office. Anyone who has served twelve years or more at one court level shall not be eligible for another term at that level.

The measure also repeals section 7 of Article VI, which provides, "The full term of office of justices of the Supreme Court shall be ten years."

The title set by the Title Board for #75 reads as follows:

> An amendment to the Colorado constitution concerning term limits for appellate court judges, and, in connection therewith, providing four-year terms of office for justices of the supreme court and judges of the court of appeals, prohibiting a justice of the supreme court or a judge of the court of appeals from serving more than three terms, and making any justice or judge who has served more than twelve years at one court level ineligible for another term at that level.

The ballot title and submission clause contains the same language, except that it is preceded by the words, "Shall there be," and the punctuation at the end of the title is changed to a question mark.

STATEMENT OF THE CASE

The Title Board met on February 1, 2006 to set a title for this measure. Transcript of February 1, 2006 of Meeting of Initiative Title Setting Review Board (hereafter "Feb. 1 Tr.") at 19:4-9. On February 8, 2006, Bennett S. Aisenberg and

Federico C. Alvarez submitted a Motion for Rehearing, which was heard at the Board's February 15 meeting. The Board granted in part and denied in part the Motion for Rehearing. Transcript of February 15, 2006 of Meeting of Initiative Title Setting Review Board (hereafter "Feb. 15 Tr.") at 63:23-64:10.

SUMMARY

The title set by the Board is deficient in several respects. First, it fails to inform voters that the tenure of currently sitting judicial personnel will be governed by this measure. Those justices and judges will be required to stand for retention at the next general election, unless they will have served twelve or more years, in which case they will be ineligible for continued service on that court. Second, it fails to inform voters that current judicial terms are shortened, treating them as if they had been made for four years rather than the existing ten-year terms for Supreme Court justices and eight-year terms for Court of Appeals judges. Third, it fails to inform voters that a partial term counts as a full term for purposes of the maximum amount of time one person can spend on the appellate bench. Fourth, it erroneously implies that #75 imposes term limits when it merely modifies them. And finally, the proponents persuaded the Board to use "term limits" in the ballot title, notwithstanding the fact that this phrase has never been

used in a ballot title on this topic and it is one that the proponents use for political leverage.

As such, the titles should be returned to the Board for correction.

LEGAL ARGUMENT

A. A ballot title must inform voters of all key provisions contained in the initiative, and any title that fails to do so is misleading.

The Title Board is charged with crafting a brief yet accurate title that "fairly express[es] the true meaning and intent of the proposed state law or constitutional amendment." § 1-40-106(3), C.R.S. The title must summarize the key elements of an initiative so that voters can appropriately evaluate it. Properly crafted, a ballot title ensures the integrity of the election process for initiated measures. "The Board must simultaneously consider the potential public confusion that might result from misleading titles and exercise its authority in order to protect against such confusion." Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # 25, 974 P.2d 458, 469 (Colo. 1999).

The ballot title is no mere formality. It is included on petitions, § 1-40-110(2), C.R.S., so that voters know what they are being asked to refer to a public vote. The title is the only information on the ballot itself that voters see when they vote on a proposed measure. As such, the Board's titles must "enable the electorate, whether familiar or unfamiliar with the subject matter of a particular

proposal, to determine intelligently whether to support or oppose such a proposal." In re Proposed Initiative Concerning "State Personnel System", 691 P.2d 1121, 1123 (Colo. 1984). And after the election, the title will be reviewed by the courts to help discern what voters considered – or did not consider – in voting for the measure. City of Wheat Ridge v. Cerveny, 913 P.2d 1110, 1115 (Colo. 1996).

A ballot title must be concise. § 1-40-106(3)(b), C.R.S. However, the price of being succinct cannot be the omission of significant elements of an initiative. "[I]f a choice must be made between brevity and a fair description of the essential features of a proposal, the decision must be made in favor of full disclosure to the registered electors." In re Matter of Title, Ballot Title and Submission Clause, and Summary for Proposed Election Reform Amendment, 852 P.2d 28, 32 (Colo. 1993) (hereafter "Election Reform Amendment"). The question for the Court is, then, whether full disclosure of an initiative's important aspects has been made.

The Court presumes that the Title Board has fulfilled its duties and provided the voting public with an accurate title. The Court will not revise a title merely because it could have been drafted differently or even more artfully. Nor will the Court analyze the meaning of the measure, beyond that indicated by its plain language and the statements of the proponents' intent, in order to evaluation the

Title Board's handiwork. And the Board is not required to state all of an initiative's effects. Id. at 33.

Even so, the Court's review of a ballot title is not superficial. "Our duty is to ensure that the title, ballot title, submission clause, and summary fairly reflect the proposed initiative so that petition signers and voters will not be misled into support for or against a proposition by reason of the words employed by the Board." Id. at 33. Where the Board has not correctly and fairly expressed the true intent and meaning of the proposed, the title is returned to the Board to be corrected, based upon directions from this Court.

B. The title must communicate that currently sitting judges and the commencement dates of their terms are affected by this measure.

This initiative paints with a broad brush. It governs the tenure of all justices on the Supreme Court and judges on the Court of Appeals, whether they are sitting on those courts at the time of passage or whether they are appointed in the future. Voters should know that existing terms are shortened by this measure, an aspect of the measure that the title fails to accurately communicate.

1. #75 limits the terms of sitting justices and appellate judges.

According to the proponents, this initiative was designed to affect currently serving members of the appellate bench. "[W]e intend this to operate on incumbents." Feb. 15 Tr. 31:6. Any judge or justice who has already served twelve

years would not be eligible for another term. Feb. 15 Tr. 31:13-14. And the remaining justices and appellate judges, who are now serving but who will not have served the maximum allowable twelve years, will be required to stand for retention at the next general election. Feb. 15 Tr. 31:7-10.

After this issue was addressed at the rehearing,[1] the Board became concerned enough about this facet of the initiative to change the title, but these revisions did not go far enough. One board member advocated amending the staff draft because most voters "would not instinctively or intuitively" apply the measure to the terms of currently sitting judges. Feb. 15 Tr. 29:17-25 (comments of Mr. Dunn). Another noted that #75's applicability to current terms is "a pretty dramatic result of the proposal that's not in our titles right now." Feb. 15 Tr. 30:8-9 (comments of Mr. Hobbs).

The Board's title, as revised, provides only that this measure "mak[es] any justice or judge who has served more than twelve years at one court level ineligible for another term at that level." It does not indicate, as the proponents did, that sitting judges who had served twelve years would have to vacate their offices after the following general election. This measure, in a surreptitious way, ushers a large part of the current appellate bench out of office. When existing members of a

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[1] This issue was raised before the Title Board. Motion for Rehearing, para. 6; Feb. 15 Tr. 11:5-7.

governmental body are to be affected by a seemingly procedural change such as this one, the nature of the system overhaul must be clear in the title. For instance, this Court has required that a ballot title reflect the change in the composition of the state senate and state house of representatives resulting from a reformatting of legislative districts. It was "a matter of significance to all concerned with the issue dealt with in the proposed amendment" that some legislators would be turned out of office if an initiative passed. Election Reform Amendment, 852 P.2d, at 36. It is not enough that the Board alludes to "any justice or judge" with the hope that voters will infer that terms of currently sitting members of the appellate bench are shortened and capped because of this measure.

2. *#75 shortens terms that are currently being served.*

Perhaps the most surreptitious aspect of the measure is that it shortens the terms of all currently sitting justices and appellate judges to four years. This feature was raised as part of the discussion of #75's retroactive applicability.[2]

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[2] This issue was raised before the Title Board. Motion for Rehearing, para. 6. The proponents exhaustively addressed the shortening of current terms as part of the measure's applicability to sitting judges and justices. "No. 6 [from the Motion for Rehearing] on retroactivity, Mr. Dunn and I did have some colloquy last time. I don't disagree with Mr. Grueskin's interpretation of the way **our amendment** is written that – that it **would upon adoption immediately begin to operate on everyone currently sitting on the court of appeals and supreme court.** I don't consider that retroactive. I – **I consider that to operate about when is the next**

As to this point, the proponents were quite specific. Currently serving judges and justices hold office only until the next general election because their "ten-year term has been revised to four years." Feb. 15 Tr. 44:1-3. To clarify one Board member's questions about how incumbents were affected, the proponents set forth the following example. "[W]hen terms already end according to the constitution, and if Section 27 were added, then – then Judge Brown or Judge Smith, who thought they were on a term of eight years, ten years, have been now advised by the voters that all the longer we intended to keep you was – was four years after your last retention or until – until the next January after the next general election." Feb. 15 Tr. 46:16-24. Given this statement, the board chairman restated this facet of the initiative. If #75 passed, a "justice would continue to serve the remainder of what is now a four year term." Feb. 15 Tr. 47:22-23 (comments of Mr. Hobbs).

Nothing in the ballot title adopted by the Board reflects this retroactive change in the length of sitting jurists' terms. As a result, voters could not possibly know that #75 changes existing term lengths, including those of justices and appellate judges who were retained at previous elections and appellate judges who stand for retention in 2006. This ambiguity is a fatal one. The Court has

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time that someone's term would – would be considered to be up for review by the voter." Feb. 15 Tr. 25:20-26:4 (emphasis added).

invalidated another judicial term limits proposal because its title did not inform voters whether that measure affected the retention votes for judges also on the 2000 ballot. In re Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #29, 972 P.2d 257, 267 (Colo. 1999). When voters consider #75, they will be voting on court of appeals retentions at the same November, 2006 election. Yet, they will not know whether their vote to retain those judges for eight years is trumped by their vote for four-year terms for all justices and appellate judges.

Therefore, this ballot title fails to communicate a key element of #75 – namely, that all existing judicial terms are retroactively treated as four-year terms. The measure is not, as voters would reasonably assume, prospective in nature. The Court found in #29 that the initiative at issue contained "either a material ambiguity or a concealed intent." Id. at 269. In either event, the title could not stand. This measure suffers from the same infirmity, and therefore, the ballot title set for #75 must be returned to the Board to be corrected.

C. The title must inform voters that a partial term will count toward the limit on service by appellate judges.

The measure provides that a provisional term counts as a full term, but this fact is not reflected in the titles.[3] Provisional terms are interim terms when a judge or justice is appointed to fill an unexpired term. They last for two years and then until the second Tuesday in January following a general election. Colo. Const., art. VI, sec. 20(1).

The title approved by the Board provides that justices and judges have "four-year terms of office," are prohibited "serving more than three terms," and can serve no more than "twelve years at one court level." In other words, the title appears to state a fairly straightforward mathematical equation: four years times three terms equals twelve years.

But as the proponents noted before the Board, the actual service permitted will be less than twelve years, given that appointments typically begin by service of a provisional term. "I don't envision a circumstance where they (judges and justices appointed after the effective date) would serve more than two plus four plus four years either." Feb. 15 Tr. 30:20-22. The proponents made virtually a verbatim statement to this same effect at the original title setting hearing. Feb. 1

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[3] This issue was raised before the Title Board. Motion for Rehearing, para. 2; Feb. 15 Tr. 9:2-23.

Tr. 17:22-25. There is a theoretical possibility that someone could serve almost twelve years, but it would be much more common that justices and appellate judges would "serve more than ten but less than 12 (years)." Feb. 15 Tr. 33:8.

But the proponents disagreed that the role of partial terms in calculating total service should even be mentioned in the title. "I don't think the ten-year concern belongs in the title. It is an incidental feature of the operation of the design here." Feb. 15 Tr. 31:18-21. They displayed a strong preference for portraying the measure as providing for twelve years of judicial service at any one level of the appellate courts. "[T]he 12 years that are stated in the proposal itself, the language of the constitutional amendment, I think that's the only number of years of which the voters need to be advised." Feb. 15 Tr. 30:25-31:1-4.

In #29, the Court noted that the measure then before it counted a partial term as a full term. Judges and justices were limited to three four-year terms, and any judge retained by less than sixty percent of the voters could only serve a one-year term until the next annual election. This one-year of service was counted as a full term. 972 P.2d at 268. The title's silence on this aspect of the initiative was a factor in the Court's conclusion that, in describing a measure that limited judicial terms, "the Title Board reinforces voter confusion about the effect of a 'yes' or 'no' vote." Id. The purposeful crafting of a measure that obfuscates this element of an

initiative is an "abuse of the voters' right to be presented with straightforward distinct proposals." Id.

Similarly, voters should not frame their support for or opposition to #75 on the basis of a hypothetical twelve-year tenure at any one court level, particularly when the Board stated that the measure "really is a ten-year limitation." Feb. 15 Tr. 29:18-19 (comments of Mr. Dunn). Voters should know that where a judge or justice resigns, his or her successor will serve a partial term that counts as a full term under the measure. Whether this is a political plus or minus is unknown, but it is important. In the legislative context, this very issue was fiercely litigated in the last several weeks (see Exhibit 7 submitted to the Board) and was also widely reported in the media. Because the partial term issue was controversial in the legislative context and would likely generate similar interest around #75, it should be related to voters in the ballot title.[4]

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[4] Before the Board, this case was discussed. The Board was thus aware that the ballot title for the initiative that imposed limits on legislative and executive terms was silent regarding the impact of partial terms on the total duration a person could hold state office. Feb. 15 Tr. 9:2-23; *see* Exhibit 7.

D. The title must indicate that the measure repeals constitutional and statutory terms for Supreme Court justices and Court of Appeals judges.

This measure expressly repeals the ten-year terms provided by the Constitution for Supreme Court justices in Article VI, section 7 of the Constitution. *See* section 2 of #75. It also supersedes the eight-year statutory terms for Court of Appeal judges. § 13-4-104, C.R.S. However, the title does not reflect these repeals.[5]

The title states that #75 has the outcome of "providing four-year terms of office for justices of the supreme court and judges of the court of appeals." This statement implies that the measure establishes, rather than changes, limitations on judicial terms. This phrase is politically powerful, but it is substantively inaccurate.

In #29, the initiative summary's reference to repeal of terms of office for Supreme Court justices was enough so that the combined product of the Title Board was not misleading to voters. 972 P.2d at 266, n.14. That summary expressly stated: "The measure would repeal conflicting provisions of the Colorado constitution including: The terms of office and qualifications for judges and justices...." Id. at 270. There is no comparable statement in the ballot title for

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[5] This issue was raised before the Title Board. Feb. 15 Tr. 12:1-10.

#75, and there is no summary to rescue this title. Voters will not know that they are repealing the existing limitations on the terms of sitting appellate judges and justices. They may vote for or against #75, thinking that in "providing" for limits on judicial service, they are filling a void when in fact none exists.

Accordingly, the title is misleading in this respect and should be returned to the Board for correction.

E. As used in proponents' political messaging, "term limits" is a catchphrase or slogan, and the Title Board's inclusion of that phrase at proponents' request was error.

The title is not supposed to be part of the political leveraging between proponents and opponents. But because the proponents sought to replace the language that has always been used to frame these measure – "limiting future terms of office" – and replace it with "term limits," the title is now part of the campaign dialogue about this measure.[6]

A phrase included in a ballot title that can influence voters regarding the measure violates the requirement that a title be neutral and fair. § 1-40-106(3)(a), C.R.S. Titles may not contain a catch phrase that unfairly prejudices the proposal in its favor. *See* In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # # 227 & 228, 3 P.3d 1, 3 (Colo. 2000). A "catch phrase" consists of

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[6] This issue was raised before the Title Board. Motion for Rehearing, para. 1; Feb. 15 Tr. 4:2-8:22.

"words which could form the basis of a slogan for use by those who expect to carry out a campaign for or against an initiated constitutional amendment." In re Title, Ballot Title and Submission Clause, and Summary for 1997-1998 # 105, 961 P.2d 1092, 1100 (Colo. 1998). "By drawing attention to themselves and triggering a favorable response, catch phrases generate support for a proposal that hinges not on the content of the proposal itself, but merely on the wording of the catch phrase." In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # 258(a), 4 P.3d 1094, 1100 (Colo. 1998). The fact that the initiative text includes a particular phrase is not a good reason to include the language in the title. Id. But the mere allegation that a phrase constitutes a catch phrase is not sufficient; there must be evidence submitted that establishes this allegation. # # 227 and 228, 3 P.3d at 7.

Here, the proponents ran "push polls" in late 2005 that framed high profile judicial decisions with the possible remedy of "term limits." (Exhibit 1 submitted at hearing, appended to Feb. 15 Tr.) These "polls" are intended persuade rather than just survey voters, and this goal is evident from the text of the push polls run in late 2005. *See* id. Information about these push polls was widely disseminated on the Internet. (Exhibit 2 submitted at hearing, appended to Feb. 15 Tr.) The proponents spoke openly of term limits as the antidote to "virtual life terms on the

bench." (Exhibit 3, page 4, submitted at hearing, appended to Feb. 15 Tr.) Term limits are also posed as **the** answer to certain judicial decisions which reflect ultra-hot buttons for the electorate: "Murderers let off on a technicality... Property rights trampled... School vouchers thrown out." Id. The tone of the campaign to come is clear: only the elixir of term limits can cure the ailing judicial system. How else will Coloradans be able to stem the tide of judges the proponents are already referring to as "'black-robed dictators?'" (Exhibit 4 submitted at hearing, appended to Feb. 15 Tr.)

Notably, the original staff draft of the ballot title did not include a reference to "term limits." Like ballot titles for previous initiatives proposing limits on judicial service, (*see* Exhibits 5 and 6 submitted at hearing), the staff draft referred to a "limitation on the terms of appellate court personnel." Feb. 1 Tr. 9:1-2. At the proponents' suggestion, though, this phrase was changed to "term limits for appellate court judges." And the proponents stated the reason they wanted this change: "Term limit is a catchphrase." Feb. 1 Tr. 10:20. They added that they thought it was "plain language" and "would be clearer to voters," Feb. 1 Tr. 10:21-11:1, and later said they had not meant that it was a catch phrase in the legal sense. Feb. 1 Tr. 14:8-20. But their political rhetoric was not before the Board at this

initial hearing, rhetoric that suggests "term limits" is not intended to be a neutral phrase.

In any event, a phrase need not be inherently loaded with political meaning in order to qualify as a catch phrase. A phrase that is seemingly neutral – like "as rapidly and effectively as possible" – can be a political slogan. #258(a), 4 P.3d at 1100. It all depends on the way in which the words are used, as it is the current political climate and "the context of contemporary political debate" that determines whether specific wording qualifies as a catch phrase. # # 227 and 228, 3 P.3d at 7. If the Court finds that a phrase "tips the substantive debate surrounding the issue to be submitted to the electorate," #258(a), 4 P.3d at 1100, the Board has not done its duty to provide a fair and impartial ballot title.

Given the blatantly political usage of this phrase by proponents in recent months and their clear request to include these words in the ballot title, "term limits" is not intended to be, and will not be, an inconsequential addition to this ballot title. The Board's decision in this regard should be reversed.

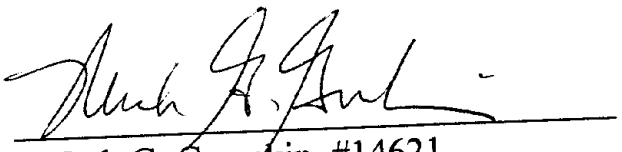
CONCLUSION

The ballot title fails to inform the voters of critical elements of the initiative: current justices and appellate judges are affected; existing judicial terms are shortened; provisional terms are counted toward the maximum period that can be

served in judicial office; limits already provided by law are repealed; and the measure uses a term that fits neatly into the political rhetoric used by proponents. The title can be salvaged, but this title should not be placed before the voters. Accordingly, it is respectfully requested that the Court return the ballot title to the Board for corrections.

Respectfully submitted this 14th day of March, 2006.

ISAACSON ROSENBAUM P.C.

By: 

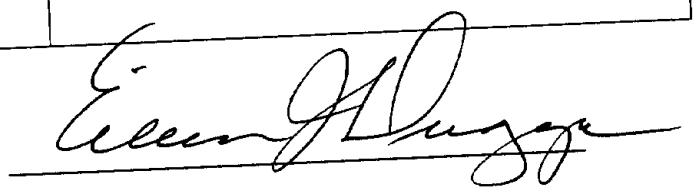
Mark G. Grueskin, #14621
Daniel C. Stiles, #35695

ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of March, 2006, a true and correct copy of the foregoing **PETITIONERS' OPENING BRIEF** was either hand delivered or sent via overnight delivery to the following:

Kathleen A. LeCrone 4371 S. Fundy Street Centennial, Colorado 80015	John K. Andrews, Jr. 7156 S. Verbena Way Centennial, Colorado 80112
Maurice G. Knaizer, Esq. Deputy Attorney General Colorado Department of Law 1525 Sherman Street, 5th Floor Denver, Colorado 80203	



ORIGINAL

Certification of Word Count: 2,470

SUPREME COURT, STATE OF COLORADO

2 East 14th Avenue
Denver, CO 80203

ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2006) Appeal from the Ballot Title Setting Board

IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2005-2006 #75
BENNETT S. AISENBERG AND FEDERICO C. ALVAREZ
OBJECTORS,

Petitioners,

v.

JOHN K. ANDREWS, JR. AND KATHLEEN A. LECRONE
PROPONENTS;
WILLIAM A. HOBBS, JASON DUNN AND DAN CARTIN
TITLE BOARD,

Respondents.

JOHN W. SUTHERS, Attorney General
MAURICE G. KNAIZER, Deputy Attorney General*
1525 Sherman Street, 5th Floor
Denver, CO 80203
(303) 866-5380
Registration Number: 05264
*Counsel of Record

COURT USE ONLY

Case No.: 06 SA 63

ANSWER BRIEF OF TITLE BOARD

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OTHER AUTHORITIES

William A. Hobbs, Jason Dunn and Dan Cartin, the Title Setting Board (hereinafter "Board"), by and through undersigned counsel, hereby submit their Answer Brief.

STATEMENT OF THE ISSUES

The Board adopts the Statement of Issues set forth in the Petitioners' brief.

STATEMENT OF THE FACTS

The Board adopts the Statement of Facts set forth in the Petitioners' brief.

STATEMENT OF THE CASE

The Board adopts the Statement of the Case set forth in the Petitioners' brief.

SUMMARY OF THE ARGUMENT

The titles adopted by the Board are accurate and fair. The central feature of the proposal is the amendment to state constitutional provisions governing the length of terms of judges of the Colorado Court of Appeals and justices of the Colorado Supreme Court, including judges and justices presently serving on these courts. The impact of the measure on sitting judges and justices is a secondary feature of the measure. The Board properly declined to include provisional terms in the titles. The fact that the certain existing constitutional provisions will be superceded is not significant.

The phrase "term limits" is not a catch phrase.

ARGUMENT

I. The titles are fair, clear and accurate.

The proposed measure would create a new section 27 to article VI of the Colorado Constitution. It provides:

> Terms of office for the Court of Appeals and Supreme Court judges shall be four years. At each level, no one shall serve more than three terms of office. A provisional term shall be a term of office. Anyone who has served twelve years or more at one court level shall not be eligible for another term at that level.

The title set by the Board states:

> An amendment to the Colorado constitution concerning term limits for appellate court judges, and, in connection therewith, providing four-year terms of office for justices of the supreme court and judges of the court of appeals, prohibiting a justice of the supreme court or a judge of the court of appeals from serving more than three terms, and making any justice or judge who has served more than twelve years at one court level ineligible for another term at that level.

The ballot title and submission clause contains the same language, except it is in the form of a question.

Section 1-40-106(3), C.R.S. (2005) establishes the standard for setting titles. It provides:

> In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general effect of a "yes" or "no" vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly state the true intent and meaning thereof, together with the ballot title and submission clause, shall be completed within two weeks after the first meeting of the title board . . . . Ballot titles shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and shall be in the form of a question which may be answered "yes" (to vote in favor of the proposed law or constitutional amendment) or "no" (to vote against the proposed law or constitutional amendment) and which shall unambiguously state the principle of the provision sought to be added, amended or repealed.

The titles must be fair, clear, accurate and complete. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #256*, 12 P.3d 246, 256 (Colo. 2000) (*#256*). However, the Board is not required to set out every detail. *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002 #21 and #22*, 44 P.3d 213, 222 (Colo. 2002). In setting titles, the Board may not ascertain the future effects, either practical or legal, of a measure, *#256*, 12 P.3d at 257, or its efficacy. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #246(e)*, 8 P.3d 1194, 1197 (Colo. 2000). The Court does not demand that the Board draft the best possible title. *#256*, 12 P.3d at 219. The Court grants great deference to the Board in the exercise of its drafting authority.

Id. The Court will reverse the Board's decision only if the titles are insufficient, unfair or misleading. *In re Proposed Initiative Concerning "Auto. Ins. Coverage,"* 877 P.2d 853, 857 (Colo. 1994).

A. The titles should not distinguish between sitting appellate judges and justices and future appellate judges and justices.

The Objectors contend that the titles are incomplete because they do not mention the impact on current judges on the Court of Appeals and justices on this Court. In particular, they contend that the titles must discuss: (1) the limitation on terms of sitting appellate judges and justices, and (2) the alteration of the length of terms of current appellate judges and justices.

With regard to the arguments concerning sitting judges and justices, the Objectors ask the Court to make a distinction that the measure itself does not make. The Objectors are asking this Court to single out and discuss the effect of this measure on the group of judges or justices who are in office during the transition period.

The Court must reject the claim. The measure discusses all appellate judges and justices. It does not distinguish in any manner between sitting and future judges and justices. If the measure passes, all persons who presently, and in the future will, occupy these positions will be similarly treated. The Board is not

required to discuss the impact of the measure on a subgroup of persons subject to the measure, when the measure itself does not discuss this impact.

The Objectors cite *In re Proposed Election Reform Amendment*, 852 P.2d 28 (Colo. 1993) ("*ERA*") and *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # 29*, 972 P.2d 257 (Colo. 1999) ("*#29*") to support their arguments. These cases are inapposite. In *ERA*, the proponents presented a complex, multi-subject measure. Among other matters, the measure specified a change in the number of state senate and house districts. The Court found that the proposal would unequivocally require reapportionment, thereby resulting in a change of representatives for at least some districts. The measure, if passed, would have immediately changed the structure of the legislative branch. *ERA*, 852 P.2d at 36.

In the case now before this Court, the measure on its face does not immediately alter the structure of the judicial branch. The number of judges on the Court of Appeals and the Supreme Court remains the same, and the jurisdiction of each court is unchanged. Thus, the citizenry will not be affected as voters would have been if the *ERA* measure had passed.

#29 is also inapposite. In *#29,* the proponents sought to make wholesale changes to provisions governing the appointment of judges. The measure had an

inherent ambiguity or a surreptitious provision that also was reflected in the title. The ambiguity or surreptitious provision arose "from its stated effective date of November 6, 2000, in comparison with its provision of three four year future terms of office and the fact that the year 2000 election will occur on November 7, 2000." *#29*, 972 P.2d at 267. The measure and the titles did not clarify whether the initiative, which was effective the day before the general election, would shorten the term of the judges who were retained at the general election.

In the present case, the measure is neither ambiguous nor surreptitious. Its text does not distinguish between sitting and future judges. The terms of all judges will be shortened if the measure passes. The titles accurately reflect this provision within the measure.

B. The Board did not err by refusing to include "provisional terms in the title.

The Objectors also contend that the Board should have included a statement that a provisional term counts as a full term. The Court must reject this argument.

First, mentioning "provisional term" in the title may actually mislead the public. "Provisional term" is a term of art used in Colo. Const. art. VI, § 20 to describe the time between a judge's initial appointment and the judge's first retention election. The public may very well confuse this term with the more generally known partial terms. Colo. Const. art. IV, § 1; art. V, § 3(2); art. VIII,

§ 11. Partial terms cover any period of time within a term of office. The measure does not discuss partial terms, and whether a partial term counts as a full term is not specifically discussed in the measure.

Moreover, the Objectors' argument is based upon the presumption that a provisional term will, for all practical purposes, reduce the actual length of potential service on the bench from twelve years to two years. As noted in the colloquy between the Mr. Hobbs and Mr. Andrews, this result may not actually occur.

> MR. HOBBS: I'm wondering if, in fact, that means you get two years for sure, and then that at the end of two years, its an additional amount of time.
>
> MR. ANDREWS: I believe that it does—it does mean that and—and—that, in fact, would create some circumstances where future appointees, depending on where they came in the cycle, would, in fact, serve more than ten but less than 12.
>
> MR. HOBBS: It could be—
>
> MR. ANDREWS: It's another reason—
>
> MR. HOBBS: --almost 12 years.
>
> MR. ANDREWS: Yeah, it could be. It could be 12 years less a day or two.
>
> ....
>
> So there would—there could be a circumstance where somebody would serve three years and 50 weeks, perhaps. I think we maybe tangling ourselves up more than we need to.

(Tr. February 15, 2006, p. 33, ll. 1-25). It is just as likely as not that most judges will be able to serve close to a full 12 years.

Under these circumstances, including a statement about provisional terms in the title will not enhance voter understanding of the measure.

C. The Board properly refused to include a statement in the titles that the measure repeals existing provisions in the law.

The Objectors contend that the titles should state that the measure will repeal existing limits on the terms of appellate judges and justices of this Court. According to the Objectors, the public must be informed that there are existing term limits. Whether the provisions of the measure establish new limits or amend existing limits is immaterial. The key function is to describe the new limits. The titles indeed describe the new limits.

D. "Term limits" is not a catch phrase.

A catch phrase consists of "words that work to a proposal's favor without contributing to voter understanding. By drawing attention to themselves and triggering a favorable response, catch phrases generate support for a proposal that hinges not on the content of the proposal itself, but merely on the wording of the catch phrase." *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #258(A),* 4 P.3d 1094, 1100 (Colo. 2000). Catch phrases "form the

basis of a slogan for use by those who expect to carry out a campaign for or against an initiated constitutional amendment that prejudices the voter understanding of the issues presented to the voters." *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #227 and #228*, 3 P.3d 1, 6-7 (Colo. 2000). The existence of a catch phrase must be determined in the context of contemporary political debate. The "task is to recognize terms that provoke political emotion and impede voter understanding, as opposed to those which are merely descriptive of the proposal." *Id.*

The phrase "term limits" does not generate support for a proposal independent of the content of the measure. Colorado voters approve term limit provisions irrespective of the use of the phrase. The titles and Blue Book explanations did not use the phrase "term limits" describing the 1990 term limits measure. *An Analysis of 1990 Ballot Proposals* (1990) pp. 19-22.[1] The measure passed. The title for the 1994 term limits measure did not use the phrase term limits. However, the Blue Book contained numerous references to "term limits" in explaining Amendment 17. For example, it stated:

- "The term limits now in place in Colorado would not be changed"
- "Term limits in other states". . . . Fifteen states have adopted term limits"

[1] The Blue Book excerpts are attached.

- "Term limits for local governments"

An Analysis of 1994 Ballot Proposals, Research Publication No. 392 (1994) pp. 53-54. The measure passed.

In 1996, the title of a term limits ballot proposal included the phrase "term limits." The title stated, "An amendment to the Colorado Constitution concerning congressional term limits." *An Analysis of 1996 Ballot Proposals*, Research Publication No. 415 (1996) p. 14. The measure passed.

In 2002, the General Assembly referred a measure to the voters seeking to exempt district attorneys from term limits. The measure was entitled "An amendment to the constitution of the state of Colorado exempting district attorneys from constitutional term limits." *2002 Ballot Information Booklet*, Research Publication No. 502-10 (2002) p. 76. The description of the measure is replete with the phrase "term limits."

- The Table of Contents states, "Exempt Elected District Attorneys from Term Limits"
- The title of the first section in the section entitled "Background" is "Term Limits."
- The arguments for and against the measure both use the phrase "Term Limits."

Id. at pp. 21-23. Voters rejected the measure.

The one consistent fact is that voters approve term limits, irrespective of the use of the phrase, when asked to limit terms and reject removing term limits. The phrase "term limits" does not generate support for the measure. It is the concept behind the phrase that matters to Colorado's voters.

The Objectors presented evidence that the proponents used the phrase "term limits" in some of the public statements. However, they presented no proof that the voters would be influenced by the phrase. Moreover, they have not presented any evidence that voters in the 1990, 1994, 1996 or 2002 elections were influenced by the phrase. One can conclude that there is no evidence from prior elections that the phrase influenced voters.

Finally, the phrase is nothing more than an objective short-hand reference to describe the provision. For example, this Court has used the phrase "term limits" as an objective short-hand reference in analyzing prior measures seeking to impose judicial term limits. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #104*, 987 P.2d 249, 260 (Colo. 1999) (section of opinion entitled "Term Limits"); *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # 29*, 972 P.2d 257, 268 (Colo. 1999) (section of opinion entitled "Term Limits Requirement"). It is nothing more than a descriptive term.

CONCLUSION

For the above-stated reasons, the Board respectfully requests that the Court approve the titles.

JOHN W. SUTHERS
Attorney General

MAURICE G. KNAIZER, 05264*
Deputy Attorney General
Public Officials
State Services Section
Attorneys for Title Board
*Counsel of Record

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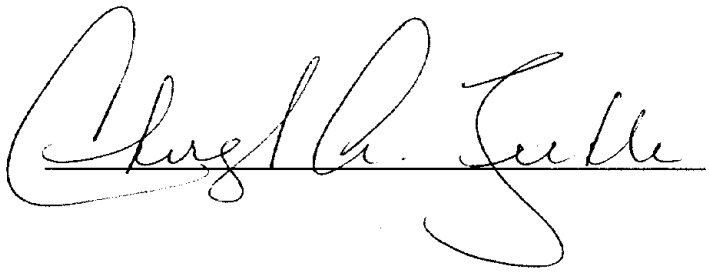
CERTIFICATE OF SERVICE

This is to certify that I have duly served the within ANSWER BRIEF OF TITLE BOARD upon all parties herein by depositing copies of same, express mail, at Denver, Colorado, this 3rd day of April, 2006 addressed as follows:

Mark Grueskin
Isaacson Rosenbaum P.C.
633 17th Street, Suite 2200
Denver, CO 80202

Kathleen LeCrone
4371 S. Fundy St.
Centennial, CO 80015

John Andrews, Jr.
7156 S. Verbena Way
Centennial, CO 80112



AMENDMENT NO. 5 — CONSTITUTIONAL AMENDENT INITIATED BY PETITION

Limitation of Terms

Ballot Title: *An amendment to the Colorado Constitution limiting the number of consecutive terms that may be served by the Governor, Lt. Governor, Secretary of State, Attorney General, Treasurer, members of the General Assembly, and United States Senators and Representatives elected from Colorado.*

Provisions of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

— limit the terms of office of the Governor, Lieutenant Governor, Secretary of State, State Treasurer, and Attorney General to two consecutive four year terms, effective for terms beginning on or after January 1, 1991;

— limit the terms of office of state senators to two consecutive four-year terms, and state representatives to four consecutive two-year terms, effective for terms beginning on or after January 1, 1991;

— limit the terms of office of Colorado's U.S. Senators to two consecutive six-year terms, and Colorado's U.S. Representatives to six consecutive two-year terms, effective for terms beginning on or after January 1, 1991;

— declare the support of the people of Colorado for a nationwide limit of twelve consecutive years of service in the United States Senate and House of Representatives and for Colorado public officials to use their best efforts to work for such a limit;

— declare the will of the people of Colorado to encourage the federal officials elected from Colorado to voluntarily observe the wishes of the people with respect to the limitation of congressional terms if any provision of the measure is determined to be invalid by the courts.

History

Efforts to limit the terms of elected officials have been made since the founding days of the United States of America. In 1777, the Continental Congress imposed a three-year limit on delegates under the Articles of Confederation. However, when the U.S. Constitution was drafted to replace the Articles of Confederation in 1789, term limitations were not incorporated into the constitution. At present, there are no limits on congressional terms in the U.S. Constitution, although presidential terms were limited to two four-year terms with the ratification of the 22nd Amendment to the U.S. Constitution in 1951. To date, no state has constitutionally limited the terms of its federal officeholders. The issue of whether it is constitutional for a state to limit the terms of its federal officeholders has not been decided upon by the courts.

Comments on the Proposed Amendment

The following three tables present a profile of Colorado's state and federal elected officeholders in terms of how many years they serve, the amount of turnover in elected office, and the extent to which current officeholders maintain their positions.

Limitation of Terms

TABLE I

The **average tenure**, or number of years served, for state and federal public officeholders between 1960 and 1988 was:

Colorado Delegation to U.S. Congress

Members of House of Representatives	6.0 years (3 terms)
Members of Senate*	9.6 years (1.6 terms)

State Offices

State Repesentatives	4.5 years (2.3 terms)
State Senators	6.4 years (1.6 terms)
Executive Brance Elective Office**	6.8 years (1.7 terms)

* includes unfinished terms through 1990
** includes Governor, Lt. Governor, Sec. of State, Treasurer, and Attorney General

TABLE II

The **average turnover rate**, or ratio of newly elected individuals to the total number of seats in a given year, during the **1980s** was:

	Colorado Congressional Delegation		General Assembly (100 members)		Executive Branch Elective Office	
1980	14%	(1/7)*	28%	(28/100)	no election	
1982	13%	(1/8)	39%	(39/100)	40%	(2/5)
1984	13%	(1/8)	25%	(25/100)	no election	
1986	50%	(4/8)	34%	(34/100)	60%	(3/5)
1988	0%	(0/8)	19%	(19/100)	no election	
(Avg)	18%		29%		50%	

* indicates # of newly elected/total # of seats

TABLE III

The **incumbency reelection rate**, or the rate at which officeholders seeking reelection win, was in the **1980s**:

	Colorado Congressional Delegation		General Assembly (100 members)		Executive Branch Elective Office	
1980	100%	(5/5)*	90%	(57/63)	no election	
1982	100%	(5/5)	88%	(45/51)	100%	(3/3)
1984	100%	(6/6)	92%	(57/62)	no election	
1986	75%	(3/4)	88%	(53/60)	100%	(2/2)
1988	100%	(6/6)	97%	(65/67)	no election	
(Avg)	95%		91%		100%	

* indicates # elected/# seeking reelection

Limitation of Terms

Three measures were introduced during the 1990 session of the Colorado General Assembly which attempted to limit terms of office for elected officials at the state and national level. None of these measures were adopted by the General Assembly. In addition to the measures introduced in 1990, six similar measures were introduced in the General Assembly between 1975 and 1989, none of which were adopted by the General Assembly nor placed on the ballot. Six measures have been introduced to date in the 101st Congress which attempt to limit or change congressional terms of office, none of which have been passed by either house of Congress.

Arguments For

1) Our founding fathers believed holding elected office was a public service to be performed only for a limited time. Today, however, we refer to some elected officials as "career" or "professional" politicians and many such officials view their positions as career or lifetime jobs. This careerism stems partly from the fact that incumbents seeking reelection nearly always win. Once in office for long periods of time, incumbents tend to lose touch with the interests of their constituents and focus more of their attention on issues over which they have gained power through the seniority system. The result is a system in which political participation is discouraged, office holders are unresponsive to constituents, and elected officials spend more time on election campaigns than they do on their duties as public officials. A return to a "citizen" government through the limitation of terms is the answer to this political congestion.

2) Long periods of service by public office holders does provide for experience but does not necessarily provide citizens with better lawmakers. Limiting terms of office will allow more individuals, particularly those with established professions or occupations outside of public office, the opportunity to serve the public. Broadening public service will invigorate the political system by making room for new policy-makers with new perspectives on addressing public policy issues. Realizing that terms of office are limited, public officeholders will be more productive, devote more time to their duties as elected officials, and will be more bold in political decision-making without fearing the potential impact of such decisions on future reelection efforts.

3) It is necessary for the voters to approve this initiated measure because it is highly unlikely that those whom it will affect—namely elected officeholders—will ever work to bring it about themselves. Asking current officeholders to vote in favor of limiting terms of office is asking them to vote themselves out of a job or livelihood which many have no plans to relinquish claim to. Since all past attempts to adopt a limit on terms in both the General Assembly and U.S. Congress have failed, it is time for the people of Colorado to take a stand and join the other states in this grass roots effort to limit terms of office.

4) That portion of the measure which limits terms of members of Congress from Colorado will be a first step in limiting United States congressional terms. Colorado will and should be the leader in this effort. The notion of limiting the powers of government is by no means a new one to the citizens of the United States—in fact, our constitutional theory is based upon limitations on the powers of government. For this reason, it is likely that other states will join Colorado in this effort. It is time to stop worrying about losing our share of the federal spoils system, and to start making our governmental system a more equitable one.

Arguments Against

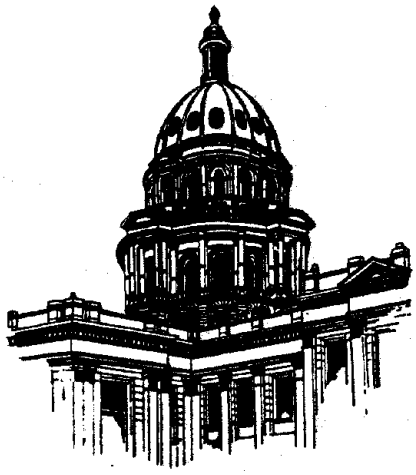
1) This measure should be rejected because it fails to address what ails our political system. The problems of corruption and incumbency advantage will persist even if term limitations are instituted. If our aim is to have more competitive elections and to limit the advantages of the incumbent, we can achieve these goals without artificially limiting terms of office. For example, we can overhaul the campaign finance laws by placing a cap on campaign spending or by limiting campaign funds raised by political action committees; reduce the duration of the legislative session; reduce the mailing and travelling privileges of incumbents; reduce the large personal staff of incumbents; reduce congressional salaries; abolish the accrual of congressional pensions based on years of service; redraw district lines; and, provide more equitable media coverage of candidates and their records. These alternatives to limiting terms will bring about the same desired results without the need for constitutional amendments.

2) In a democracy, people should be able to vote for whomever they want without arbitrary limits. Term limitations would make our political system less democratic because they would infringe upon the voters' freedom of expression. Term limitations represent a distrust of the voters' ability to choose the best candidate. The voters presently choose by means of election the individuals that they wish to serve them, and remove from office those public servants who they do not want to serve them either by not reelecting them or by recall. Voters should be able to continue to exercise these rights without limitations.

3) There is nothing wrong with having long-time experience in public office. To believe otherwise is to believe that elective office is the one vocation where experience is an obstacle to good performance. It takes a great deal of time to gain the experience necessary to tackle complex governing issues. The price of this measure is to force seasoned officeholders to leave office just as they had acquired valuable experience, and to strengthen the hand of permanent bureaucrats, congressional staff and lobbyists, none of whom are elected by, or accountable to, the public. Seasoned office- holders' value stems not only from their experience, but from their ability to rise above parochial concerns and usefully temper youthful enthusiasm with a historical perspective on policies that have worked and those that have failed.

4) The citizens of Colorado would suffer under that portion of the measure which would limit the terms of the state's congressional delegation. Because Colorado would be limiting only the terms of its own Washington delegation, relative to other states it will lose its seniority and power in Congress. It is unlikely that an amendment to the U.S. Constitution limiting the terms of office of Congressmen from all 50 states will ever be adopted. Under this proposal, Colorado would stand alone in forcing its representatives to step down just as they have gained enough experience to achieve positions of leadership and authority in Washington. As a result, many issues will be decided with less influence from Colorado's Washington delegation or Colorado's citizenry.

LEGISLATIVE COUNCIL
OF THE
COLORADO GENERAL ASSEMBLY



AN ANALYSIS OF
1994 BALLOT PROPOSALS

Research Publication No. 392
1994

one town to another to satisfy a patron request? Book dealers, video store owners, film distributors and movie theater owners must, on a daily basis, try to determine what material appeals to potential customers without breaking the laws of obscenity. Since a criminal defense can cost tens of thousands of dollars, businesses and libraries will be forced to conform to the most restrictive standard enacted by a local government.

In addition, health organizations which distribute information about AIDS, birth control, abortion, or human sexuality will become more vulnerable to legal challenges regarding sexually explicit educational and instructional materials. Although such challenges may eventually be defeated in court, the court challenges would cost time and money and could be used by opponents of health organizations as harassment.

5) The proposed amendment will allow political subdivisions to assess whether material is obscene, based on local community standards rather than a statewide standard. These aspects of the proposed amendment raise critical issues. First, the result will be a patchwork of local ordinances in the state, and determining the constitutionality of the local ordinances could require years of court action. Second, the strictest local standard could, in effect, become the statewide standard because libraries and other distributors of materials may not be willing to risk criminal prosecution by testing variations in obscenity standards from place to place.

6) The proposed amendment may result in censorship. The dictionary defines a censor as "an official who examines books, plays, news reports, motion pictures, radio and television programs, letters, cablegrams, etc, for the purpose of suppressing parts deemed objectionable on moral, political, military, or other grounds." In other words, censorship is the limitation by government of what people can read, see, and hear: it is a substitution of judgement by the government. A second definition of censor is "any person who supervises the manners or morality of others." The proposed amendment is both kinds of censorship.

7) No link between pornography and violence against women and children has been proven. The final report of the 1986 U.S. Attorney General Edwin Meese's Commission on Pornography has been criticized for its predetermined bias in favor of censorship, which many observers believe led to a predetermined conclusion. A Meese Commission member who wrote the draft report stated in a separate commentary that he did not make the claim, nor did the Meese Commission report, that a causal relationship exists between sexually explicit materials and acts of sexual violence. The commission member also wrote that he considered the deregulation of sexually explicit materials "only quite sensible." Furthermore, some experts believe that pornography provides a release for sexual urges that otherwise could take the form of inappropriate sexual conduct. A constitutional amendment to limit free speech, to deny adults access to certain materials, and to create a "chilling" effect for book dealers and video store owners would be inappropriate, given the lack of consensus concerning the effect of viewing pornography.

Amendment 17 – Term Limits

Ballot Title: AN AMENDMENT TO THE COLORADO CONSTITUTION TO LIMIT THE NUMBER OF CONSECUTIVE TERMS THAT MAY BE SERVED BY A NONJUDICIAL ELECTED OFFICIAL OF ANY POLITICAL SUBDIVISION OF THE STATE, BY A MEMBER OF THE STATE BOARD OF EDUCATION, AND BY AN ELECTED MEMBER OF THE GOVERNING BOARD OF A STATE INSTITUTION OF HIGHER EDUCATION AND TO ALLOW VOTERS TO LENGTHEN, SHORTEN, OR ELIMINATE SUCH LIMITATIONS OF TERMS OF OFFICE; AND TO REDUCE THE NUMBER OF CONSECUTIVE TERMS THAT MAY BE SERVED BY THE UNITED STATES REPRESENTATIVES ELECTED FROM COLORADO.

The proposed amendment to the Colorado Constitution would:

- amend the term limitation provisions adopted by the voters of Colorado as a constitutional amendment in 1990 specifying the maximum consecutive terms of office, beginning January 1, 1995, as follows:

  United States House of Representatives – reduce the number of consecutive terms from six to three consecutive terms, or from 12 to six years.

  Local elected officials – establish a new limit of two consecutive terms of office, unless this limitation is changed by the voters of that political subdivision. (Includes elected officials of counties, municipalities, school districts, service authorities, and other political subdivisions.)

  Other state elective offices – establish a new limit of two consecutive terms for members of the State Board of Education and the University of Colorado Board of Regents, a total of 12 years.

- allow the voters of a political subdivision to lengthen, shorten, or eliminate the limitations on terms of office imposed by this amendment;
- allow the voters of the state to lengthen, shorten, or eliminate the terms of office for the two state education boards included in this proposal;
- state that the people of Colorado, in adopting this amendment, are in support of a nationwide limitation of terms of not more than two consecutive terms for members of the U.S. Senate and three consecutive terms for members of the U.S. House of Representatives and that public officials of Colorado are instructed to use their best efforts to work for such limits; and
- state that the intent of this measure is that federal officials elected from Colorado will continue to voluntarily observe the wishes of the people as presented in this proposal in the event that any provision of this proposal is held invalid.

Background

As defined in existing law, "consecutive terms" means that terms are considered consecutive unless they are four years apart. Also, any person appointed or elected to fill a vacancy in the U.S. Congress and who serves at least one half of a term of office shall be considered to have served one full term in that office.

The term limits now in place in Colorado would <u>not</u> be changed by this proposal:

U.S. Senators – two consecutive terms or 12 years

State elected officials (Governor, Lieutenant Governor, Attorney General, State Treasurer, Secretary of State) – two consecutive terms or eight years

Colorado General Assembly –

Senators – two consecutive terms or eight years
Representatives – four consecutive terms or eight years

Term limits in other states. Colorado was one of the first states to adopt term limitations for elected officials when it approved an initiated proposal in 1990. Fifteen states have adopted term limits for their members of the U.S. House of Representatives: Arizona, Arkansas, California, Michigan, Montana, Oregon, Washington, and Wyoming allow members to serve three terms; Florida, Missouri, Nebraska, and Ohio limit members to four terms; and Colorado, North Dakota, and South Dakota allow their members a total of six terms.

Term limits for local governments. At the present time, no states have constitutional limits on the number of consecutive terms local officials may serve. This issue will be on the ballot in five states in 1994 with each state providing a two consecutive term limitation. The states voting on this issue in 1994 are Colorado, Idaho, Nevada, Nebraska, and Utah. In Colorado, home rule cities may establish their own term limits, either through a referred or initiated amendment to the city charter. Colorado Springs, Lakewood, Greeley, and Wheat Ridge are among the cities that have adopted term limits.

Terms of members of the U.S. House of Representatives. Fourteen persons from Colorado have served in the U.S. House of Representatives since 1970. Of these 14 members, the number of terms served ranged from a high of three members serving 12, 11, and 10 terms down to two members serving one term each. Including the terms served by these members before 1970, there were a total of 59 terms served by these 14 members, an average of 4.2 terms per member.

Term limits began for Colorado members of the U.S. House of Representatives beginning on January 3, 1991. With six consecutive terms permitted, present members of the U.S. House of Representatives could serve until January, 2003. This proposal provides that the new term limitations are to begin on January 1, 1995. With three consecutive two-year terms, a member elected to the U.S. House of Representatives this November could serve consecutive terms until January, 1999.

The ability of a state to impose term limitations on elected federal offices such as members of Congress is subject to challenge. Limitations on terms of members of Congress have been challenged in at least two other states, Arkansas and Washington. The courts ruled against the term limits for members of Congress in both states. There is no pending litigation involving the Colorado provisions on term limitations. The U.S. Supreme Court has agreed to hear the Arkansas case in its 1994-95 term, with a decision expected in 1995.

The principal reason for holding congressional term limits unconstitutional is the "qualifications clause" of the U.S. Constitution. The courts in the Arkansas and Washington decisions held that the U.S. Constitution requires only three things as qualifications for members of Congress: 1) to be 25 years of age; 2) to be a U.S. citizen; and 3) to be a resident of the state from which the member is elected. Any other limitations on eligibility of service, including the number of terms served, would represent an unconstitutional imposition of an additional qualification on candidates for federal office. Thus, the constitution of the United States, not a state constitution, would need to be amended to accomplish term limitations for federal offices.

Proponents of term limits at the congressional level argue that restrictions on ballot access are permissible as matters of state consideration under the concept of federalism. States, under the Ninth and Tenth Amendments of the U.S. Constitution, have powers reserved to them that include the ability to regulate elections for federal offices.

Term limits for education board members. This amendment adds term limits for two elected state boards, the State Board of Education, a seven-member board, and the University of Colorado Board of Regents, a nine-member board. These officers may not serve more than two consecutive terms, a total of 12 years.

Arguments For

1) Voters in Colorado adopted the concept of term limits in 1990 as a method of keeping elected officials from viewing their positions as lifetime or career jobs. By forcing turnover, new people will be able to enter the political scene and bring fresh ideas into the legislative branch of the government and to local governments.

xtending term limits to local officials, reducing the consecutive terms permitted for ıembers of the U.S. House of Representatives, and limiting terms of the two elected ate boards represents the completion of the term limit concept in Colorado.

2) A reduction in the number of consecutive terms from six to three terms for the .S. House of Representatives will provide more competitive races for these seats in most every election. Stronger candidates will emerge if a real possibility of winning ı election is seen. Political parties will work harder at finding serious candidates hen an election race is competitive and not looked at as a "throwaway" campaign. /ith a three-term limit, each of the elections can be vigorously contested. The problem ith the six-term limit is that the first and last elections may be competitive but, in ıany instances, the elections in between will not be as competitive because of the ıvantages of incumbency. Re-election of members of Congress is almost automatic, ıallengers rarely defeat incumbents.

3) By implementing term limits, service in the U.S. Congress will be regarded as ıblic service, not as a career. The three-term limit will provide the opportunity for ıe House of Representatives to become a citizen legislature. Many qualified ıdividuals will be interested in serving four or six years in Washington and then turning to their home state to resume their previous careers. The turnover in presentation resulting from term limitations, especially a three-term limit, will bring ore "real world" private sector experience to the decisions made by Congress.

4) Primary goals of the term limitation movement are to begin to restructure the .S. Congress and restore the idea that the U.S. House of Representatives is a gislative body of the people that acts as a barometer of public concern. A six-term ouse limit does nothing to change congressional incumbency because the average ımber of years served in the U.S. House of Representatives is 10.1 years. For olorado members who have served since 1970, as shown on page 54, the average is 4 years. Thus, a six-term limit (12 years) is longer than the average stay of House embers.

This proposal is a means of changing the methods by which Congress operates and elevating the public perception of Congress as an institution. As more states adopt rm limits, there will be a reduction in the importance of the seniority system. egislators will no longer need to serve multiple terms in order to be influential.

rguments Against

1) An additional reduction in the terms that members of the Colorado delegation the U.S. House of Representatives may serve from six to three consecutive terms ould mean that Colorado's already limited influence in that chamber would be further eakened. This would occur until other states, particularly the largest states, adopt a ımilar limitation. The prospect of other states doing this may be some years away. hile 15 states have adopted term limits for their members of the U.S. House of epresentatives, 35 have not yet acted. By adopting a three-term limit, the Colorado legation will be subject to more severe limitations than are found in 41 states. It may appropriate to have a limit on consecutive terms that is equivalent to two terms (12 ars) of U.S. Senators, but not to have a limit that would equate to only one term of Senator.

2) The proposal unnecessarily imposes term limitations on all local government fices rather than simply authorizing local citizens to impose local limits where needed desired. The statewide mandate imposes uniform term limits on thousands of elected fices throughout the state. Taxpayers who wish to repeal or modify the state andated limits must go to the trouble, time, and expense of conducting a separate

election to repeal the limits or substitute appropriate limits tailored to local conditions and desires. While the proposal allows local governmental units to exempt themselves from the term limits, a better course of action would be to simply allow local communities to act on their own if they determine that a problem of incumbency needs to be addressed.

3) The local government officials and members of the two state boards that would be affected by this proposal are not part of the entrenched, privileged groups that have created the term limit issue. For many local governments, the problem is not the long tenure of officials, rather it is a problem of securing interested and qualified individuals to serve. In smaller communities, the pool of talent available for public office is not large and turnover in office is high, not low. Local government positions are not career positions and most local government elected officials receive only a small stipend or none at all. Salaries are paid to the Denver City Council members and to county officers because these positions are considered to have either full-time or substantial part-time commitments. Members of the State Board of Education and the Board of Regents receive no salaries, and only one person on one of the two boards has served more than two consecutive terms since 1970.

4) The beneficial results claimed for term limitations are not yet known and cannot be evaluated at this time. Colorado is still four years away from the first restrictions on elected officials running for re-election. An analysis of the results of term limits should be completed before any further reductions are made, particularly when the state stands to lose influence in the U.S. Congress.

5) In a democracy, people should be able to vote for the candidates they want to have in office without arbitrary limits. Term limitations make our political system less democratic because citizens may be denied equal protection since their right to vote for their preferred candidate is limited. Further, there will be a shift in power from elected officials to lobbyists and nonelected officers, including bureaucrats and congressional staff, because term limits result in a loss of institutional memory and continuity in elected positions.

AMENDMENT 18 – STATE MEDICAL ASSISTANCE – REPAYMENT

Ballot Title: AN AMENDMENT TO THE COLORADO CONSTITUTION TO PROVIDE, EFFECTIVE JULY 1, 1995, THAT ANY PAYMENT OF MEDICAL ASSISTANCE BY ANY AGENCY OF THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS TO A BIOLOGICAL PARENT OR THIRD PARTY ON BEHALF OF OR FOR THE BENEFIT OF THAT BIOLOGICAL PARENT'S CHILD BORN ON OR AFTER JULY 1, 1995, FOR ANY MEDICAL ASSISTANCE RENDERED TO THE CHILD SHALL CONSTITUTE A DEBT OWED TO THE AGENCY JOINTLY AND SEVERALLY BY: A) THE BIOLOGICAL PARENT WHO IS NOT THE APPLICANT FOR OR RECIPIENT OF THE MEDICAL ASSISTANCE PAYMENT, UNTIL THE CHILD REACHES FULL AGE, AND B) EACH BIOLOGICAL OR ADOPTIVE PARENT OF A MINOR BIOLOGICAL PARENT OF THE CHILD, UNTIL THE INCOME, PROPERTY AND RESOURCES OF THE PARENT BECOME INSUFFICIENT OR UNTIL THE MINOR BIOLOGICAL PARENT REACHES FULL AGE; TO REQUIRE THAT THE APPLICANT FOR OR RECIPIENT OF ASSISTANCE SHALL ASSIST THE APPROPRIATE AGENCY IN ESTABLISHING THE PATERNITY OF THE CHILD; AND TO EXEMPT FROM THE INCURRED DEBT MEDICAL ASSISTANCE RENDERED TO THE BIOLOGICAL PARENT OR CHILD WHEN SUCH ASSISTANCE IS AVAILABLE TO THE PUBLIC WITHOUT REGARD TO ECONOMIC STATUS.

The proposed amendment to the Colorado Constitution would:

- require that any costs for medical assistance provided by the state, or any of its political subdivisions, to parents receiving medical assistance on behalf of their children born on or after July 1, 1995, shall constitute a debt owed to the state;
- state that medical assistance would include, but not be limited to, prenatal care, birth delivery, and post-partum care;

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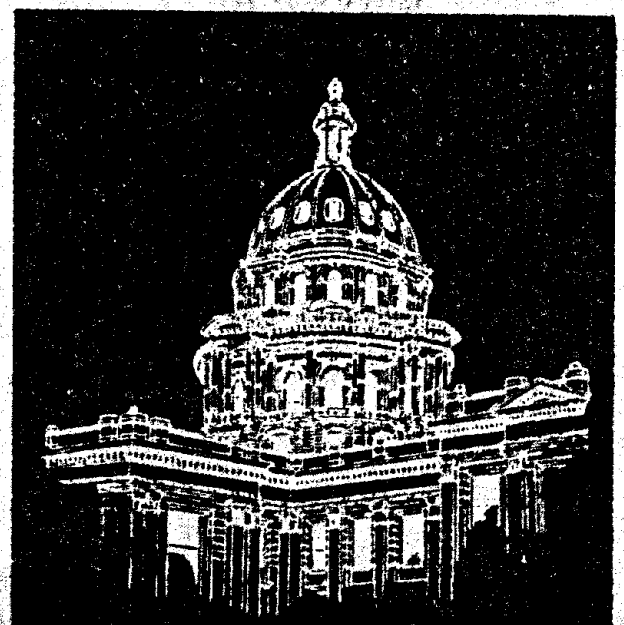

An Analysis of 1996 Ballot Proposals

Research Publication No. 415
1996

fortunate in society, but taxing churches and other nonprofit organizations will only reduce their ability to provide charitable services.

3) Imposing property taxes on churches and charitable organizations will force some to close, eliminating the activities and services they offer. Government cannot possibly replace them all since no increased money will be available and some rely on volunteers today. Services that may be lost include those that the community has a duty to provide, such as medical assistance, food banks, child care, meals on wheels, soup kitchens, and social activities for youth and the elderly. Further, many communities in Colorado are served by nonprofit hospitals, which are currently exempt. This amendment could force many of these hospitals to increase their charges for services, possibly reducing access to health care for many Coloradans.

4) Taxing churches could lead to excessive involvement by the state in religious activities, which is prohibited by the federal constitution. By eliminating the exemption for religious property, this proposal would expand government interaction with religious organizations through the valuation of church property, reporting and auditing requirements, and the potential for tax liens and tax foreclosures.

5) Residential property owners in some areas could pay more in property taxes because of this measure. The main beneficiaries will be businesses and industries because they pay the largest share of property taxes. The small benefit to taxpayers is not worth the $70 million burden that this amendment places on religious and charitable organizations.

AMENDMENT 12 — TERM LIMITS

Ballot Title: An amendment to the Colorado Constitution concerning congressional term limits, and, in connection therewith, specifying a proposed amendment to the U.S. Constitution that limits U.S. senators to two terms, former and incumbent U.S. senators to one additional term, U.S. representatives to three terms, and former and incumbent U.S. representatives to two additional terms; instructing Colorado's state senators and representatives to vote to apply for an amendment-proposing convention; instructing Colorado's U.S. senators and representatives to pass said term limits amendment; requiring that all election ballots have "disregarded voter instruction on term limits" next to the name of an incumbent U.S. senator or representative or incumbent state senator or representative when such senator or representative fails to take specific actions in support of said term limits amendment; providing that non-incumbent candidates for U.S. and state senator and representative be given an opportunity to take a pledge in support of said term limits amendment; requiring that primary and general election ballots have "declined to take pledge to support term limits" next to the name of a non-incumbent candidate who has not signed such pledge; authorizing the Secretary of State to determine whether the terms of this amendment have been complied with and whether such

designations should appear on the ballot; and allowing any legal challenge to this amendment to be filed with the Supreme Court of Colorado as an original action.

The complete text of this proposal can be found on pages 52-53 of this booklet.

The proposed amendment to the Colorado Constitution:

- ✓ begins the process in Colorado to call a convention to propose an amendment to the U.S. Constitution to limit congressional terms;
- ✓ provides that the congressional term limits amendment considered at the amendment-proposing convention, commonly referred to as a constitutional convention, restricts members of the U.S. House of Representatives to three two-year terms and members of the U.S. Senate to two six-year terms, and limits former and current House members to two additional terms and Senate members to one additional term;
- ✓ instructs each Colorado state legislator to vote for a constitutional convention to propose a congressional term limits amendment to the U.S. Constitution and to ratify the amendment when it is referred to the states;
- ✓ requires that, until the congressional term limits amendment is approved by the Colorado General Assembly, all election ballots identify any state legislator who failed to vote for the amendment during the steps necessary to amend the U.S. Constitution;
- ✓ instructs each member of Colorado's congressional delegation to vote for the amendment;
- ✓ requires election ballots to identify each member of Congress from Colorado who fails to vote for the amendment during the steps in the process necessary to win its approval;
- ✓ requires primary and general election ballots to identify which non-incumbents running for Congress and the state legislature have not signed a pledge to vote for the term limits amendment; and
- ✓ provides that challenges to the amendment be filed before the Colorado Supreme Court.

Background

First in 1990, then in 1994, Colorado voters limited the terms of office for elected officials to the U. S. Congress. These limitations, along with congressional term limits approved by 22 other states, were struck down by the U.S. Supreme Court in 1995.* In its decision, the Supreme Court ruled that congressional term limits can only be established in the U.S. Constitution, not by action of the individual states. Local and state term limits, such as those in Colorado, are unaffected by the court's decision.

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1. *U.S. Term Limits, Inc. v. Thornton*, 115 S.Ct. 1842 (1995).

The U.S. Constitution provides two methods by which amendments may be proposed. Congress can propose an amendment by a two-thirds vote of each house's members, or two-thirds of the states can pass a resolution to apply to Congress to call a constitutional convention. In either case, a constitutional amendment must be approved by the legislatures of three-fourths of the states or in conventions of three-fourths of the states. At least 34 states must adopt a resolution to convene a constitutional convention for term limits. In 1996, at least 17 states have attempted to get this initiative on their state ballots, and 10, thus far, have been successful in doing so.

Members of U.S. Congress. Eighteen persons from Colorado have served in the U.S. House of Representatives since 1970. Of these 18 members, the number of terms served range from three members serving 13, 12, and 8 terms down to one member serving one term. Of the total membership of the 1995-96 U.S. House of Representatives, about 51 percent have served more than three terms, or more than six years. The average number of terms served by current members of the U.S. House of Representatives is about five terms or 10 years.

Eight persons from Colorado have served in the U.S. Senate since 1970. Of these eight members, the number of terms have ranged from a high of one member serving three terms (18 years) to three members serving one term. Of the 100 members of the 1995-96 U.S. Senate, 45 have served more than two terms, i.e., more than 12 years. The average number of terms served by the entire 1995-96 membership of the U.S. Senate is 2.6 terms or slightly over 15 years.

Arguments For

1) We cannot expect Congress to act against its self interest; voters must force the issue by initiating a proposal limiting their representatives' terms. For example, 33 term limit measures have been introduced in the present Congress. None received the necessary votes for a constitutional amendment. Efforts are underway in at least 14 states to place the issue before the voters.

2) Term limits will make Congress a citizen legislature and will focus Congress on national instead of parochial interests. Many qualified individuals will be willing to serve four or six years in Washington and then will return home to resume their careers. The turnover from term limits will bring more real world experience to the decisions made by Congress. For Colorado members who have served in the House of Representatives since 1970, the average number of years served is about nine, more than the six-year limit in the proposal.

3) This initiative gives voters the opportunity to know how candidates stand on the issue of congressional term limits. First, the ballot will indicate whether a non-incumbent candidate has pledged to vote at every opportunity for a congressional term limits amendment. Second, a ballot designation reflects incumbents' legislative actions on this issue. These methods are ways of holding candidates accountable to the voters.

4) The claim argued by opponents that a constitutional convention could radically alter the Constitution is unreasonable. Three-fourths of the states must ratify any constitutional amendment passed by the convention. Thirty-eight states still must ratify any proposed amendment.

Arguments Against

1) Calling for a constitutional convention could result in changes far beyond the term limit issue. Although a convention might be called for a specific purpose, such as a term limits amendment, there is nothing in this proposed amendment or in federal law that restricts a constitutional convention from going beyond the term limits issue. Even if the Congress limits the issues considered at a constitutional convention, convention delegates could go beyond the legal boundaries. In fact, at the original constitutional convention in 1787, delegates disregarded the rules and altered the ratification process. Thus, a "runaway" convention is possible.

2) In a representative democracy, people should be able to vote for the candidates they want to have in office without arbitrary limits. There is nothing wrong with having long-time experience in public office. To believe otherwise is to believe that elective office is the one vocation where experience is an obstacle to good performance. The price of this measure will be a shift in power from elected officials to lobbyists and nonelected officers, including administrative and congressional staff, because term limits result in a loss of institutional memory and continuity in elected positions.

3) This proposal subverts the basic idea of representative government. The initiative instructs Colorado state and congressional elected officials to vote for a congressional term limits amendment at every opportunity. Colorado has never required that its elected officials pledge to vote on any issue. Coloradans send elected representatives to the state legislature and to Congress to exercise their best judgement on a wide variety of matters affecting the welfare of citizens. When voters lose confidence in the judgement of their elected representatives, those representatives are voted out of office.

4) This measure fails to address what ails the current political system. Non-competitive elections and advantages of incumbency can be reduced without limiting terms of office. For instance, campaign spending could be limited, congressional sessions could be shortened, mailing and traveling privileges could be reduced or withdrawn, congressional salaries could be reduced, and district lines can be redrawn for more competitive races.

AMENDMENT 13 — PETITIONS

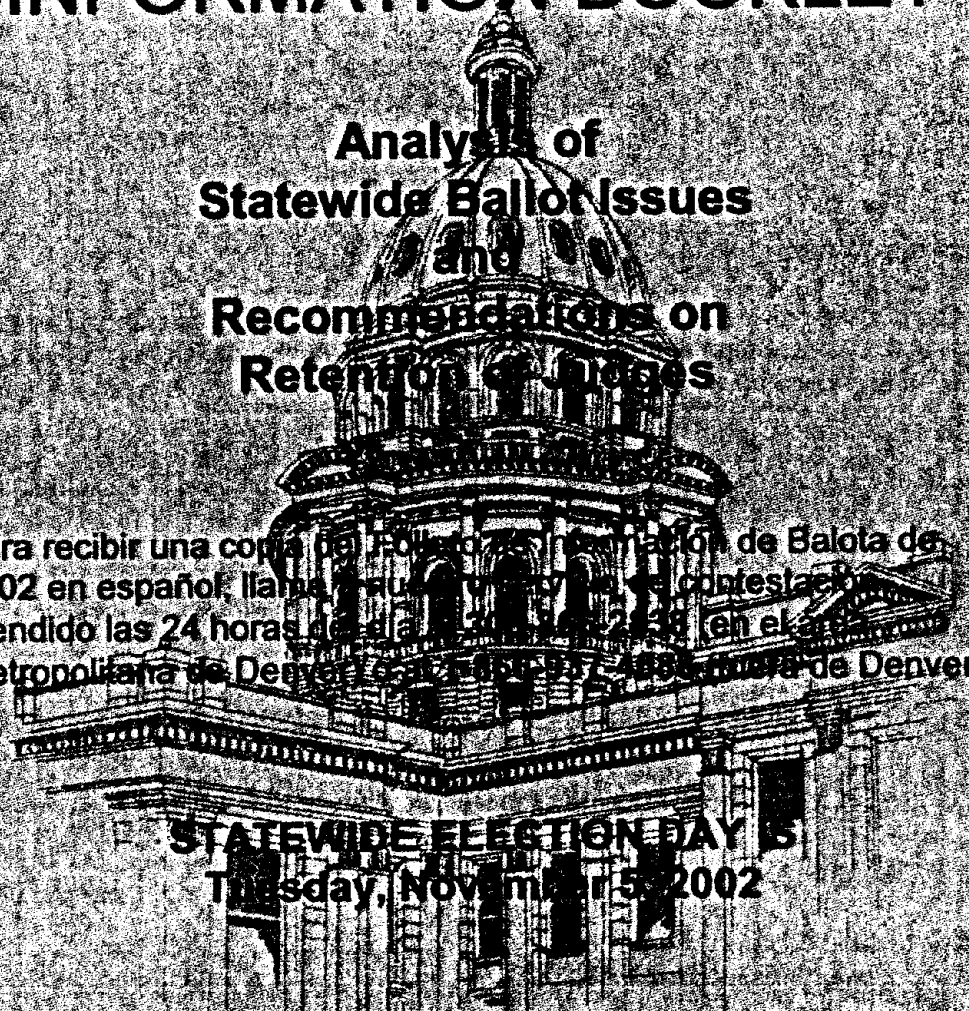
Ballot Title: An amendment to the Colorado Constitution concerning petitions, and, in connection therewith, changing initiative and referendum rights and procedures; extending petition powers to registered voters of all local governments;

Legislative Council of the
Colorado General Assembly

Research Publication
No. 502-10

2002 BALLOT INFORMATION BOOKLET

Analysis of Statewide Ballot Issues and Recommendations on Retention of Judges



Para recibir una copia del folleto de Información de Balota de 2002 en español, llame gratis [illegible] y pida una contestación atendido las 24 horas del día [illegible] en el área metropolitana de Denver) o [illegible] fuera de Denver).

STATEWIDE ELECTION DAY IS
Tuesday, November 5, 2002

Polling places open from 7 a.m. to 7 p.m.
(Early Voting Begins October 21, 2002)

A YES vote on any ballot issue is a vote IN FAVOR OF changing current law or existing circumstances, and a NO vote on any ballot issue is a vote AGAINST changing current law or existing circumstances.

attorneys holding office on the effective date of this amendment shall continue in office for the remainder of the respective terms for which they were elected or appointed. ELECTED DISTRICT ATTORNEYS SHALL NOT BE SUBJECT TO THE TERM LIMITS ENUMERATED IN SECTION 11 OF ARTICLE XVIII OF THIS CONSTITUTION.

SECTION 2. Each elector voting at said election and desirous of voting for or against said amendment shall cast a vote as provided by law either "Yes" or "No" on the proposition: "AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF COLORADO, EXEMPTING DISTRICT ATTORNEYS FROM CONSTITUTIONAL TERM LIMITS."

SECTION 3. The votes cast for the adoption or rejection of said amendment shall be canvassed and the result determined in the manner provided by law for the canvassing of votes for representatives in Congress, and if a majority of the electors voting on the question shall have voted "Yes", the said amendment shall become a part of the state constitution.

REFERENDUM B
PUBLIC/PRIVATE OWNERSHIP OF LOCAL HEALTH CARE SERVICES

Ballot Title: An amendment to section 2 of article XI of the constitution of the state of Colorado, concerning the authorization for local governments to become a partner with a public or private entity in the provision of health care services, and, in connection therewith, authorizing a local government to become a subscriber, member, or shareholder in or a joint owner with any person or company, public or private, in order to provide such health care without incurring debt.

Text of Proposal:

Be It Resolved by the Senate of the Sixty-third General Assembly of the State of Colorado, the House of Representatives concurring herein:

SECTION 1. At the next election at which such question may be submitted, there shall be submitted to the registered electors of the state of Colorado, for their approval or rejection, the following amendment to the constitution of the state of Colorado, to wit:

Section 2 of article XI of the constitution of the state of Colorado is amended to read:

REFERENDUM
EXEMPT ELECTED DISTRICT ATTORNEYS FROM TERM LIMITS

Ballot Title: An amendment to the constitution of the state of Colorado, exempting district attorneys from constitutional term limits.

Text of Proposal:

Be It Resolved by the Senate of the Sixty-third General Assembly of the State of Colorado, the House of Representatives concurring herein:

SECTION 1. At the next election at which such question may be submitted, there shall be submitted to the registered electors of the state of Colorado, for their approval or rejection, the following amendment to the constitution of the state of Colorado, to wit:

Section 11 (1) of article XVIII of the constitution of the state of Colorado is amended to read:

Section 11. Elected government officials - limitation on terms. (1) In order to broaden the opportunities for public service and to assure that elected officials of governments are responsive to the citizens of those governments, no nonjudicial elected official of any county, city and county, city, town, school district, service authority, or any other political subdivision of the State of Colorado, no member of the state board of education, and no elected member of the governing board of a state institution of higher education shall serve more than two consecutive terms in office, except that with respect to terms of office which are two years or shorter in duration, no such elected official shall serve more than three consecutive terms in office; EXCEPT THAT THIS SECTION SHALL NOT APPLY TO ELECTED DISTRICT ATTORNEYS. This limitation on the number of terms shall apply to terms of office beginning on or after January 1, 1995. For purposes of this Section 11, terms are considered consecutive unless they are at least four years apart.

Section 13 of article VI of the constitution of the state of Colorado is amended to read:

Section 13. District attorneys - election - term - salary - qualifications. In each judicial district there shall be a district attorney elected by the electors thereof, whose term of office shall be four years. District attorneys shall receive such salaries and perform such duties as provided by law. No person shall be eligible to the office of district attorney who shall not, at the time of his OR HER election, possess all the qualifications of district court judges as provided in this article. All district

2) The speed by which a student learns cannot be mandated by law. The proposal creates an unrealistic expectation that English can be learned by all children in one year. However, the speed by which a child becomes fluent in English depends on the child's age, cultural circumstances, previous education, and socioeconomic background. Some children may take longer than one year to achieve a level of proficiency comparable to their English-speaking peers. If programs are too rigid, students' individual needs may not be met.

3) The proposal adds another layer of testing requirements for English learners. School districts will have to test English learners in English every year using a national test in addition to the Colorado Student Assessment Program (CSAP) tests. The additional testing for English learners means further administrative expense and time away from classroom teaching.

Estimate of Fiscal Impact

While the proposal will not increase or decrease state expenditures, local school districts' expenditures will be impacted. Under the proposal, some school districts will have to revamp their curricula, staff assignments, and testing procedures. However, the net impact to all school districts cannot be predicted because the impacts will vary depending on how each individual school district implements the proposal.

REFERENDUM A
EXEMPT ELECTED DISTRICT ATTORNEYS FROM TERM LIMITS

The proposed amendment to the Colorado Constitution:

- eliminates term limits for elected district attorneys.

Background

Term limits. Colorado has term limits for elected state and local officials. The Colorado Constitution limits the length of office for the governor, lieutenant governor, secretary of state, state treasurer, and attorney general to two consecutive four-year terms. Members of the Colorado legislature may serve up to four consecutive two-year terms in the House of Representatives and two consecutive four-year terms

in the Senate. Members of the State Board of Education and the University of Colorado Board of Regents are limited to two consecutive six-year terms.

The maximum term of office for local elected officials is two consecutive terms. Although not expressly stated in the constitution, the Colorado Attorney General interprets the limits on terms of local elected officials to also apply to elected district attorneys. The Colorado Constitution allows the voters of a political subdivision to eliminate or change the term limits for a local official. However, the Colorado Secretary of State determined that only the state legislature can put a proposal before the voters of a judicial district to alter term limits for that district. District attorney term limits can also be altered through a constitutional amendment. This proposal amends the constitution to repeal term limits for district attorneys.

District attorneys. Colorado is divided into 22 judicial districts. The voters in each judicial district elect one district attorney who is responsible for the prosecution of criminal cases in that district. The district attorney determines which crimes to prosecute and recommends a penalty to the court. The district attorney also provides legal advice to police officers, assists in preparing search warrants, advises grand jury investigations, and may defend the counties of the district in court. In addition, the district attorney oversees an office of deputy district attorneys and support staff and prepares and administers a budget for the office. The Colorado Constitution requires a district attorney to be a licensed attorney for at least five years prior to being elected and to be a resident of the district throughout his or her term in office. A district attorney's term of office is four years.

Arguments For

1) Eliminating term limits allows residents of a judicial district to retain the expertise and experience of their district attorney. District attorneys must have specialized legal skills including knowledge of criminal law, court procedures, and police functions. Seventeen of the 22 district attorneys, with a combined total of over 200 years in office, will be term limited in 2004.

2) Term limits are unnecessary because district attorneys are already accountable to the public. Voters may remove a district attorney through the normal election process or by a recall election. District attorneys work in a public forum where their acts are a matter of public record and open to review by citizens. Further, smaller, more rural districts may have difficulty attracting a candidate who meets the requirements of the position.

3) This proposal would eliminate the destabilizing effect that term limits could have on a district attorney's office. Citizens and law enforcement officers within a judicial district rely on consistent law enforcement practices that may change when term limits force a district attorney to step down. New district attorneys may be placed at a disadvantage when taking over complex cases from a term-limited district attorney. In addition, term limits might discourage skilled attorneys from running for district attorney as their prosecutorial career could end after two terms. Of the 17 states with term limits, only Colorado limits the length of service for the district attorney.

Arguments Against

1) Term limits provide a check on the decision-making power of district attorneys. A district attorney decides who to charge and which crimes to charge. Limiting district attorneys to two terms could lessen any concern the public may have that politically motivated decision-making occurs within the office. An exception should not be made for this elected official who has significant power to enforce criminal laws. In 2004, term limits will affect district attorneys for the first time, and this proposal removes term limits before their effects can be evaluated.

2) Term limits could result in more candidate choices for the voter. Incumbents have name recognition and financial advantages that are difficult for challengers to overcome. In the past 20 years, 78 percent of the district attorneys running for reelection did not have a challenger. Term limits could provide greater opportunity for attorneys who are not career prosecutors to bring new ideas to law enforcement. More competition for the office could also lead to more aggressive prosecutorial policies and greater responsiveness to public opinion over the long term. Unlimited years of service do not necessarily provide the citizens with better prosecutors or a more responsive and sound prosecutorial policy. Voters can be trusted to fill the office with a qualified candidate.

Estimate of Fiscal Impact

The proposal does not increase state or local expenditures or taxes, nor does it affect the amount of taxpayer refunds from either the state or local governments.

ORIGINAL

CERTIFICATION OF WORD COUNT: 1891

SUPREME COURT, STATE OF COLORADO Court Address: 2 East 14th Avenue Denver, Colorado 80203	FILED IN THE SUPREME COURT APR 14 2006 OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK
ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2006) Appeal from the Ballot Title Setting Board **IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE, AND SUMMARY FOR 2005-2006 #75** **Petitioners**: BENNETT S. AISENBERG and FEDERICO C. ALVAREZ, Objectors, v. **Respondents**: JOHN K. ANDREWS, JR. and KATHLEEN A. LeCRONE, Proponents, and **Title Board**: WILLIAM A. HOBBS, JASON DUNN, and DAN CARTIN	▲ **COURT USE ONLY** ▲
Attorneys for Petitioners: Mark G. Grueskin, #14621 Daniel C. Stiles, #35695 Isaacson Rosenbaum P.C. 633 17th Street, Suite 2200 Denver, Colorado 80202 Phone Number: 303-292-5656 Fax Number: 303-292-3152 E-mail: mgrueskin@ir-law.com; dstiles@ir-law.com	Case No.: 06 SA 63

PETITIONERS' REPLY BRIEF

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Cases

Statutes

The Petitioners, though their counsel, hereby submit this Reply Brief on the question of the Title Board's compliance with the requirements for a clear, accurate, and fair ballot title on Initiative 2005-2006 #75.

LEGAL ARGUMENT

A. The titles must state that the terms of sitting judges are limited by this measure.

The Board maintains that there was no need to state in the titles that sitting judges are affected by this initiative or that the terms of sitting judges are shortened. Answer Brief at 4-6.

The proponents intended, and their language provides, that this measure apply retrospectively. Yet, the presumption given to every constitutional amendment is that such amendment will operate prospectively. In re Interrogatories Relating to the Great Outdoors Colo. Trust Fund, 913 P.2d 533, 539 (Colo. 1996); People v. Elliott, 186 Colo. 65, 68 (Colo. 1974). The voters have a right to employ this presumption and to be notified where it is not operative. It most certainly is not operative here, but the Board failed to inform voters of this important fact.

There is no debate about this measure's retrospective applicability, both as to current judicial personnel and as to their terms. The proponents acknowledged

it before the Board. Feb. 15 Tr. 25:23-26:1, 47:25-48:1. The Board does not dispute in its Answer Brief that the measure was written in precisely this way. The Board's job is to "correctly and fairly express the true intent and meaning" of an initiative. § 1-40-106(3)(b), C.R.S. Much as it did when it failed to clearly state that another judicial term limits measure applied to incumbent judges, In re Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #29, 972 P.2d 257, 267 (Colo. 1999), the Board failed to make this significant aspect of #75 apparent to voters. And as such, it erred.

B. The Board failed to make voters aware that partial terms count as full terms under this measure.

The Board maintains that it was not required to disclose that, under #75, a provisional term is the functional equivalent of a complete term. Answer Brief at 6-8.

Interestingly, the Board's position on this question has not been static. Regarding a subsequent iteration of this measure, heard by the Board at the Title Board meeting on April 5, 2006, the Board-set title included a reference to provisional terms. Initiative 2005-06 #90[1] provides, just as #75 does, that "A provisional term of office shall be a term of office." In contrast to the title set for

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[1] Attachment A, p. 2.

#75, the title fixed for #90 at least gives voters an indication that this issue is included in the proposed amendment:

> An amendment to the Colorado constitution concerning term limits for appellate court judges, and, in connection therewith, providing four-year terms of office for justices of the supreme court and judges of the court of appeals, requiring appellate judges serving as of January 1, 2007, to stand for retention at the next general election, prohibiting an appellate judge from serving more than three terms, **specifying that a provisional term constitutes a full term,** and making any appellate judge who has served ten or more years at one court level ineligible for another term at that level.[2]

The Board included this highlighted phrase at its own initiative. And while it did not elaborate on what a provisional term is, the Board at least provided an inkling that there is a further, significant limit beyond the stated three-term maximum. As such, the Board took a step in the right direction of informing the voters about this issue. It should do the same in connection with #75, which contains precisely the same limitation on judicial service.

C. The Board should not perpetuate a perception that this measure institutes a durational limit on judicial service.

The Board argues that its only obligation in setting titles is to describe the new limits, rather than state that the old limits are being repealed. Answer Brief at 8.

---

[2] See Attachment B, p. 1 (emphasis added).

Actually, the Board's duty is to accurately state all of the major features of the initiative. Where a repeal of an existing provision is contained in the measure, that repeal must be correctly related to voters. *See* In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 ##245(b), 245(c), 245(d), and 245(e), 1 P.3d 720, 723 (Colo. 2000) (Board's title concerning judicial branch reform was invalid, given the imprecise statement in the titles about the measure's repeal of the constitutional requirement that Supreme Court justices be licensed to practice law for at least five years). The mere recitation of certain provisions in the measure is not sufficient to ensure a fair and accurate ballot title. A title is invalid if it gives voters an unclear or incorrect impression about the magnitude of the change implemented by a proposed initiative. *See* In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # 104, 987 P.2d 249, 259 (Colo. 1999) (title that communicated that a certain limit on signatures required for a recall petition must also explain that the extent of this change, or voters would have been confused about the reach of the amendment). Because the title set here does not indicate that the initiative repeals the existing limit on judicial service by Supreme Court justices, it fails to clearly set forth a key provision contained in this measure.

Accordingly, the ballot title set for #75 should be corrected by the Board.

D. Notwithstanding its other uses, the ballot titles' inclusion of "term limits" was intended to be, and will be, a catchphrase.

The Board recounts the use of "term limits" in other ballot titles, Blue Book descriptions, and court decisions as evidence that its use here is not problematic. Answer Brief at 9-11.

However, it is the **contemporary** political debate that determines whether a phrase is likely to be part of a political slogan that is used by the proponents. In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #258(a), 4 P.3d 1094, 1100 (Colo. 2000). Whereas a particular phrase may have been relatively innocuous in other political climates, the question for the Court is whether the phrase at issue is a hot button today. The Board received evidence, establishing that "term limits" was included as a phrase that triggers voter passions. It is not nearly as balanced as the phrase this Court has otherwise approved for comparable ballot titles: "limiting future terms of office for state court judges." ##245(b), 245(c), 245(d), and 245(e), supra at 724; In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 ##245(f) and 245(g), 1 P.3d 739, 745 (Colo. 2000); In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #219, 999 P.2d 819, 822 (Colo. 2000).

The Board suggests that there is no proof voters would be influenced by "term limits" in the ballot title. Answer Brief at 11. Of its own accord, though, the

Court is able to discern whether a phrase is one that would inflame voter passions. While objectors to a ballot title may not merely assert that a given phrase has political connotations, the Court has not mandated that evidence of the voters' mindset be presented before the Board either. *See* #258(a), supra, 4 P.3d at 1100 (Court found that "as rapidly and effectively as possible" was a catchphrase that would likely be used in the substantive debate over the measure in a way that would favor proponents.) And when evidence such as a public opinion poll has been presented to the Board, this Court utilized its own judgment to determine whether a ballot title was fair and accurate. In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #215, 3 P.3d 11, 15-16 (Colo. 2000).

Even at this point in the electoral process, the proponents have spoken loudly and clearly about the evils associated with the current system of judicial nomination and retention and the alleged curative effects of "term limits." The proponents specifically requested that the Title Board replace neutral language in the ballot title with "term limits." As such, the Court has more than adequate evidence to find that, in this context at this time, this phrase is prejudicial and should not have been included in the titles.

CONCLUSION

The ballot title set for #75 does not completely or accurately reflect the major provisions contained in this initiative. It should be returned to the Board for correction.

Respectfully submitted this 14th day of April, 2006.

ISAACSON ROSENBAUM P.C.

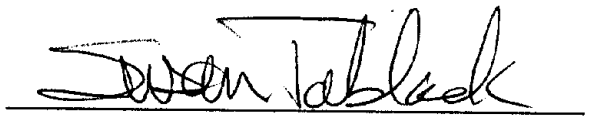
By: _____
Mark G. Grueskin, #14621
Daniel C. Stiles, #35695

ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of April, 2006, a true and correct copy of the foregoing **PETITIONERS' REPLY BRIEF** was either hand delivered or sent via overnight delivery to the following:

Kathleen A. LeCrone 4371 S. Fundy Street Centennial, Colorado 80015	John K. Andrews, Jr. 7156 S. Verbena Way Centennial, Colorado 80112
Maurice G. Knaizer, Esq. Deputy Attorney General Colorado Department of Law 1525 Sherman Street, 5th Floor Denver, Colorado 80203	



STATE OF COLORADO
Department of State
1700 Broadway
Suite 270
Denver, CO 80290

Ginette Dennis
Secretary of State

J. Wayne Munster
Acting Director, Elections Division

March 9, 2006

NOTICE OF MEETING

You are hereby notified that the Secretary of State,

Attorney General, and the Director of the Office of Legislative

Legal Services will meet for a hearing

for a proposed initiative concerning

2005 - 2006 #90*

Wednesday, April 5, 2006 at 1:30 p.m.

Secretary of State's Blue Spruce Conference Room

1700 Broadway, Suite 270

Denver, Colorado

You are invited to attend.

Ginette Dennis

GINETTE DENNIS
Secretary of State

AUDIO BROADCASTS NOW AVAILABLE. PLEASE VISIT WWW.SOS.STATE.CO.US AND CLICK ON THE "INFORMATION CENTER".

ATTACHMENT A

* Unofficially captioned **"Term Limits on Court of Appeals and Supreme Court Judges"** by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

Final #90

PROPOSED CONSTITUTIONAL AMENDMENT FOR 2006 BALLOT
INITIATIVE NO. 90

PROPONENTS
John K. Andrews, Jr.
7156 S. Verbena Way
Centennial CO 80112
720 489 7700
andrewsjk@aol.com
Registered voter, Arapahoe County

Kathleen A. LeCrone
4371 S. Fundy St.
Centennial CO 80015
Registered voter, Arapahoe County

RECEIVED
MAR 0 9 2006
ELECTIONS/LICENSING
SECRETARY OF STATE

C.H. 1:ZP.M. via email Jwm

FINAL REVISION PER LEGISLATIVE STAFF REVIEW 3/9/06

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

Section 1. Article VI of the constitution of the state of Colorado is amended by the addition of a new section to read:

(continued)

Section 27. Terms of office and term limits. EFFECTIVE JANUARY 1, 2007, TERMS OF OFFICE FOR APPEALS COURT JUDGES AND SUPREME COURT JUSTICES SHALL BE FOUR YEARS. INCUMBENTS AS OF THAT DATE SHALL STAND FOR RETENTION AT THE NEXT GENERAL ELECTION, IF ELIGIBLE FOR ANOTHER TERM AT THAT LEVEL. AT EACH APPELLATE COURT LEVEL, NO ONE SHALL SERVE MORE THAN THREE TERMS OF OFFICE. A PROVISIONAL TERM SHALL BE A TERM OF OFFICE. ANYONE WHO HAS SERVED TEN YEARS OR MORE AT ONE APPELLATE COURT LEVEL SHALL BE NOT ELIGIBLE FOR ANOTHER TERM AT THAT LEVEL.

Section 2. Repeal. Section 7 of Article VI of the constitution of the state of Colorado is repealed as follows:

Section 7. Term of office. ~~The full term of office of justices of the Supreme Court shall be ten years.~~

STAFF DRAFT

Ballot Title Setting Board

Proposed Initiative 2005-2006 #90[1]

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

An amendment to the Colorado constitution concerning term limits for appellate court judges, and, in connection therewith, providing four-year terms of office for justices of the supreme court and judges of the court of appeals, requiring appellate judges serving as of January 1, 2007, to stand for retention at the next general election, prohibiting an appellate judge from serving more than three terms, specifying that a provisional term constitutes a full term, and making any appellate judge who has served ten or more years at one court level ineligible for another term at that level.

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 term limits for appellate court judges, and, in connection therewith, providing four-year terms of office for justices of the supreme court and judges of the court of appeals, requiring appellate judges serving as of January 1, 2007, to stand for retention at the next general election, prohibiting an appellate judge from serving more than three terms, specifying that a provisional term constitutes a full term, and making any appellate judge who has served ten or more years at one court level ineligible for another term at that level?

[1] Unofficially captioned **"Term Limits on Court of Appeals and Supreme Court Judges"** by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

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2005-2006 Final Results

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Proposed Initiative 2005-2006 #26
Proposed Initiative 2005-2006 #27
Proposed Initiative 2005-2006 #28

Proposed Initiative 2005-2006 #90

Return to Initiatives homepage

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

An amendment to the Colorado constitution concerning term limits for appellate court judges, and, in connection therewith, providing four-year terms of office for justices of the supreme court and judges of the court of appeals, requiring appellate judges serving as of January 1, 2007, to stand for retention at the next general election, prohibiting an appellate judge from serving more than three terms, specifying that a provisional term constitutes a full term, and making any appellate judge who has served ten or more years at one court level ineligible for another term at that level.

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 term limits for appellate court judges, and, in connection therewith, providing four-year terms of office for justices of the supreme court and judges of the court of appeals, requiring appellate judges serving as of January 1, 2007, to stand for retention at the next general election, prohibiting an appellate judge from serving more than three terms, specifying that a provisional term constitutes a full term, and making any appellate judge who has served ten or more years at one court level ineligible for another term at that level?

Hearing April 5, 2006:
Single subject approved; staff draft adopted; titles set.
Hearing adjourned 1:52 p.m.

ATTACHMENT B

Proposed Initiative 2005-2006 #29

Proposed Initiative 2005-2006 #30

Proposed Initiative 2005-2006 #33

Proposed Initiative 2005-2006 #35

Proposed Initiative 2005-2006 #36

Proposed Initiative 2005-2006 #39

Proposed Initiative 2005-2006 #45

Proposed Initiative 2005-2006 #46

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Proposed Initiative 2005-2006 #74

Proposed Initiative 2005-2006 #75

Proposed Initiative 2005-2006 #76

Proposed Initiative 2005-2006 #76(a)

Proposed Initiative 2005-2006 #80

Proposed Initiative 2005-2006 #83

Proposed Initiative 2005-2006 #84

Proposed Initiative 2005-2006 #86

Proposed Initiative 2005-2006 #87

Proposed Initiative 2005-2006 #88

Proposed Initiative 2005-2006 #90

Proposed Initiative 2005-2006 #93

*Unofficially captioned "**Term Limits on Court of Appeals and Supreme Court Judges**" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

Prior Years Final Results

2003-2004 Final Results

Elections center: 303.894.2200 • Elections fax: 303.869.4861 • email: sos.elections@sos.state.co.us

SUPREME COURT, STATE OF COLORADO Two East 14th Avenue Denver, Colorado 80203 Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2005) Appeal from the Ballot Title Setting Board	Case No. 06SA63

IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE, AND SUMMARY FOR 2005-2006 #75,

Petitioners:

BENNETT S. AISENBERG and FEDERICO C. ALVAREZ,

v.

Respondents:

JOHN K. ANDREWS, JR. and KATHLEEN A. LeCRONE,

and

Title Board:

WILLIAM A. HOBBS, JASON DUNN, and DAN CARTIN.

Action of the Ballot Title Setting Board Affirmed
EN BANC
May 22, 2006

Isaacson Rosenbaum P.C.
Marc G. Grueskin
Daniel C. Stiles
Denver, Colorado

Attorneys for Petitioners

John W. Suthers, Attorney General

Maurice G. Knaizer, Deputy Attorney General
Public Officials, State Services Section
Denver, Colorado

Attorneys for the Title Board

No appearance by or on behalf of Respondents John K. Andrews, Jr. and Kathleen A. LeCrone

JUSTICE HOBBS delivered the Opinion of the Court.
JUSTICE EID does not participate.

In this original proceeding pursuant to section 1-40-107(2), C.R.S. (2005), petitioners Bennett S. Aisenberg and Federico C. Alvarez ("Aisenberg") challenge the action of the initiative ballot title setting board ("Title Board") in setting the title and ballot title and submission clause for Initiative 2005-2006 #75 ("Initiative #75").[1] We hold that the Title Board designated and fixed a fair, clear, and accurate title for Initiative #75 in accordance with article IV, section 1(5.5), Colo. Const., and sections 1-40-106 and 1-40-106.5, C.R.S. (2005). Accordingly, we uphold the action of the Title Board.

---

[1] Aisenberg raises the following four issues in his opening brief:

> Whether the ballot title is misleading because it does not communicate that justices and appellate judges now in office are retroactively subject to the limitations on terms established by this measure.
>
> Whether the ballot title is misleading because it does not communicate that the initiative converts the terms served by all currently sitting justices and appellate judges to four-year terms.
>
> Whether the ballot title is misleading because it implies that this initiative imposes, rather than changes, terms of office for justices on the Supreme Court and judges on the Court of Appeals.
>
> Whether "term limits" is a prohibited catch phrase, given the way it has been used by initiative proponents in political messages sent through so-called "push polls," on the Internet, and in the press.

I.

In 1966, a citizen-initiated constitutional amendment approved by the Colorado electorate ended the prior system of selecting Colorado county court, district court, and court of appeals judges and supreme court justices through partisan political elections, in favor of selecting them through nominating commissions, appointment by the governor from the list of those nominated, and retention votes by the electorate.[2] Constitutional Amendments and a Referred Law Submitted to and Adopted by the People at the General Election, Nov. 8, 1966, ch. 455, sec. 6, 1967 Colo. Sess. Laws 6.

Under the current provisions instituted by the 1966 constitutional amendment, new court of appeals judges and supreme court justices each serve a provisional term following appointment by the governor from nominations of the statewide citizen nominating commission. Colo. Const. art. VI, § 20(1). The provisional term is for two years plus the additional number of days until the second Tuesday in January following the next general election. Id.

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[2] Denver County Court judges are selected under a merit selection system established by the Denver city charter, with appointments being made by the mayor. Colo. Const. art. VI, § 26. Our discussion henceforth in this opinion focuses on court of appeals judges and supreme court justices because Initiative #75 addresses only them.

If they wish to continue serving in the judicial office to which the governor appointed them, court of appeals judges and supreme court justices must stand for a retention vote before the statewide electorate. Colo. Const. art. VI, § 25. If retained by a majority of those voting, Colo. Const. art. VI, § 25, court of appeals judges serve a term of eight years, § 13-4-104(1), C.R.S. (2005), and supreme court justices serve a term of ten years, Colo. Const. art. VI, § 7. The General Assembly created the court of appeals pursuant to section 1 of article VI of the Colorado Constitution. §§ 13-4-101 to -113, C.R.S. (2005).

Upon nearing completion of the term for which they were previously retained in office, court of appeals judges and supreme court justices are eligible to again stand for retention by the statewide electorate to serve for another eight- or ten-year term of office, respectively. Colo. Const. art, VI, § 25. However, every court of appeals judge and justice must retire by his or her seventy-second birthday. Colo. Const. art. VI, § 23(1).

Initiative #75 would add a new section 26 to article VI of the Colorado Constitution that would alter the term length and number of terms judges of the court of appeals and justices of the supreme court may serve. The text of Initiative #75 states that the terms of office for court of appeals judges and supreme

court justices shall be four years, and no court of appeals judge or supreme court justice may serve more than three terms of office. The provisional term following appointment by the governor counts as one of the three terms. No court of appeals judge or supreme court justice is eligible for another term in that office if she or he has served twelve years or more therein. The current ten-year term of office for retained justices of the supreme court would be repealed by Initiative #75.

Following hearing and rehearing, the Title Board designated and fixed the title and the ballot title and submission clause for Initiative #75. Both of these hearings contained an interchange between the members of the Title Board and one of the initiative's proponents, John Andrews. Andrews made conflicting statements about his understanding of how the proposed initiative, if enacted, would affect the existing terms of currently serving court of appeals judges and supreme court justices and those who stand for retention at the general election of 2006.

Ultimately, the Title Board concentrated on the actual wording of the proposed initiative and designated and fixed a title and ballot title and submission clause that reflect the actual wording, intent, and meaning of the proposed initiative.

Andrews testified that his intent was to "put the appeals court judges and the supreme court justices onto the shorter four-year track." Proposed Initiative 2005-2006 #75: Hearing Before the Initiative Title Setting Review Board, at 3 (Feb. 1, 2006) (hereinafter "Hearing"). Each such judge or justice would have the provisional two-year term upon appointment by the governor and then would be eligible to stand for retention twice to a four-year term. Hearing, at 4.

As to those court of appeals judges and supreme court justices who had served in their offices for 12 years, Andrews said Initiative #75 states that they would "not be eligible to be on the ballot for another retention."

> MR. DUNN: And -- and how would it apply to them?
> MR. ANDREWS: Well, it -- in that someone might have already served 12 years at which time that judge or justice would not be eligible to be on the ballot for another retention.

Hearing, at 4 (emphasis added).

Aisenberg's counsel, Mr. Grueskin, argued that the board had designated and fixed a title that did not disclose the "intent" and "workings" of the amendment. He suggested that "existing jurists . . . if they have served 12 years or more, they are effectively being kicked off the court." Proposed Initiative 2005-2006 #75: Rehearing Before Initiative Title Setting Review Board, at 11 (Feb. 15, 2006) (hereinafter "Rehearing").

At this point, Andrews began to state the proponents' intention to cut short the terms of currently serving court of appeals judges and supreme court justices, who were previously retained by the voters, to four-year terms instead of the eight- or ten-year terms the voters approved by favorable retention vote.

Andrews suggested to the board that it insert language saying that the initiative applied to both future and current judges and justices because he intended his proposal "to operate on the seven supreme court judges -- justices and 15 appeals court judges then sitting."[3] Rehearing, at 42. Mr. Andrews utilized the example of currently serving Justice Nathan Coats. Retained in 2002, Justice Coats' next retention election would be 2012 pursuant to current article VI, section 7, but would change to 2008, according to Andrews, if Initiative #75 passes in the 2006 general election in order to place the justice on the four-year term track.

> MR. DUNN: . . . . And for Justice Coats who has already served -- who, as you said, is in his sixth year, I think. He's also served his two-year provisional, and is in this first ten-year term, how would that apply to him?
> MR. ANDREWS: So depending when he was last retained--
> MR. DUNN: '02.
> MR. ANDREWS: Well, then -- then I believe at the '08 general election, he would face retention again

[3] At the time of the hearing, under section 13-4-103(1), C.R.S. (2005) there were sixteen court of appeals judges authorized by the General Assembly for this statutorily-established court.

because the next general election as close as possible to a four-year term to get him as an incumbent into the rotation that would operate more smoothly in the future, he would have to face retention.

. . . .

MR. DUNN: And then he could serve four years.
MR. ANDREWS: Yes.
MR. DUNN: So he would serve 12 years.
MR. ANDREWS: Yes.

Rehearing, at 55-56.

Turning however to the actual wording of the proposed initiative, the Title Board designated and fixed a title and ballot title and submission clause that reflected the actual wording of the proposed initiative, and it made only a minor change in the wording as a result of the rehearing.

On review of the Title Board's action, we reject Aisenberg's contention that the title and ballot title and submission clause contain a prohibited catch phrase or slogan in utilizing the phrase "term limits" and that the title and submission clause do not fairly, clearly, and accurately express the true intent and meaning of Initiative #75.

II.

We hold that the Title Board designated and fixed a fair, clear, and accurate title and ballot title and submission clause for Initiative #75 in accordance with article IV, section 1(5.5), Colo. Const., and sections 1-40-106 and 1-40-106.5,

C.R.S. (2005). Accordingly, we uphold the action of the Title Board.

A.
Fair, Clear, and Accurate Title

Article V, section 1(5.5) of the Colorado Constitution (1) prohibits an initiative that contains more than one subject, and (2) requires that this one subject shall be clearly expressed in its title:

> No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls.

Colo. Const. art. V, § 1(5.5) (emphasis added).

The Title Board's statute correspondingly recites that the single subject of the proposed initiative "shall be clearly expressed in its title." § 1-40-106.5(1)(a), C.R.S. (2005). One of the purposes of this constitutional provision and the Title Board statute is to "prevent surreptitious measures and apprise the people of the subject of each measure by the title, that is, to prevent surprise and fraud from being practiced upon voters." § 1-40-106.5(1)(e)(II), C.R.S. (2005).

Thus, the General Assembly has directed the Title Board to "designate and fix a proper fair title for each proposed law or constitutional amendment, together with a submission clause." § 1-40-106(1), C.R.S. (2005). In setting the title, the board "shall consider the public confusion that might be caused by misleading titles" and the title "shall correctly and fairly express the true intent and meaning thereof." § 1-40-106(3)(b), C.R.S. (2005). Ballot titles shall be in the form of a question that may be answered for or against the measure by a "yes" or "no" vote and "shall unambiguously state the principle of the provision sought to be added, amended, or repealed." Id.

We have previously applied these constitutional and statutory provisions to the Title Board's chosen title for a proposed initiative that contained a limitation on judicial terms similar to the one now before us. See In re Ballot Title 1999-2000 No. 29, 972 P.2d 257 (Colo. 1999). We there concluded that the proposed initiative was either ambiguous or contained a concealed intent, for which the Title Board had not properly captured its meaning in the title so that voters could give a "yes" or "no" answer to the proposition. Id. at 267.

In that case, the material ambiguity or concealed intent in the initiative and the title stemmed from an effective date in the proposed initiative that antedated the general election by one day. This led to the title not being clear as to whether

that initiative, if passed, would allow judges retained at the 2000 general election to serve the full terms to which they were elected under the then-current term provisions of the constitution as they existed on election day.

That initiative proposed, in part, that judges and justices exercising statewide jurisdiction would have only three future terms of four years each. The Title Board designated and fixed a title that did not clearly state whether the term of office to which a judge standing for retention at the 2000 election was elected would be one of the three future terms to which he or she would be limited by the initiative if adopted by the voters at the 2000 election. Id. at 268.

Reviewing the title as we are required to do by the Title Board's statute, we determined that it was not fair, clear, and accurate. Because of the wording of the title, some voters could have believed that the three four-year terms to which judges would be limited would commence at the judge's next retention election; other voters could have believed that judges retained at the 2000 election would begin their first of the three limited four-year terms upon passage of the initiative.

Accordingly, we reversed the Title Board's action. Id. Because that initiative also contained more than one subject matter, we ordered the board to strike the titles and return the initiative to its proponent instead of considering a revised

title that captured the intent and meaning of the initiative. Id.

B.
Application to this Case

In conducting our review of the Title Board's action, we do not address the merits of the proposed initiative or suggest how an initiative might be applied if enacted; however, we must examine its wording to determine whether the Title Board's action complies with the constitutional and statutory provisions governing the setting of a title and ballot title and submission clause. In re Title, Ballot Title 1997-98 No. 30, 959 P.2d 822, 825 (Colo. 1998). In construing an initiative for this limited purpose, we employ the usual rules of statutory construction, including the rule that words and phrases shall be read in context and construed according to the rules of grammar and common usage. Id. (stating that general rules of statutory construction apply to interpretation of citizen-initiated measures).

Under the applicable law, the Title Board bears responsibility for ascertaining and stating the initiative's intent and meaning through plain language that voters may answer "yes" or "no." Section 1-40-106.5(1)(e)(II), C.R.S. (2005), prevents surreptitious measures, and requires the Title Board to apprise the people of the subject of the measure by means of the

title it designates and sets, so as to prevent surprise and fraud from being practiced on the voters. In setting the title, the board "shall consider the public confusion that might be caused by misleading titles" and the title "shall correctly and fairly express the true intent and meaning thereof." § 1-40-106(3)(b), C.R.S. (2005).

In the case before us, the record shows that the Title Board received testimony from one of the proponents of Initiative #75 that created confusion about the intent and meaning of Initiative #75. Andrews stated that, should the voters pass this initiative at the 2006 general election, his intent included: (1) cutting the existing term of members of the court of appeals and the supreme court to a four-year term and (2) cutting the term of those judges and justices who are retained at the 2006 general election from the eight- or ten-year terms for which the voters approve them to a four-year term. It is this testimony upon which Aisenberg relies to claim that the title and ballot title and submission clause set by the Title Board are not fair, clear, and accurate.

The Title Board responds that (1) the wording it chose for the title and ballot title and submission clause properly reflects the actual wording, intent, and meaning of Initiative #75 and (2) this initiative is distinguishable from the 1999-2000 #29 term limits initiative case because the proposal and

titles there did not clarify whether the initiative, which was effective the day before the 2000 general election, would shorten the term of judges who were retained at that election.

We agree with the Title Board. The material ambiguity or concealed intent of the term limits proposed initiative we addressed in our decision concerning In re Ballot Title 1999-2000 No. 29, 972 P.2d 257, 267 (Colo. 1999), was an effective date of November 6, 2000 that preceded the date of the November 7, 2000 election by one day. The wording the Title Board picked was not clear as to whether the initiative proposed that judges retained as a result of the year 2000 general election could serve the full terms to which they were elected under the constitution as it existed on election day, 2000, should the initiative also be approved by the voters that day.

Accordingly, citizens voting at the year 2000 general election could have believed that they were being asked to approve: (1) ten-year terms commencing in January of 2001 for supreme court justices and eight-year terms for court of appeals judges and (2) the three limited four-year terms proposed by the initiative would be applicable to those judges and justices when they next stood for retention. Other voters could have believed that judges up for retention on the year 2000 ballot would have been entering upon the first of the three limited four-year terms if the initiative had passed.

Accordingly, we there held that the Title Board's chosen wording was unclear and misleading with regard to the term limits proposal. Here, in contrast, the actual wording of Initiative #75 contains no provision that would cut short (1) the existing terms of currently serving court of appeals judges and supreme court justices for which they were previously retained by the voters or (2) the terms of office of those judges and justices who stand for retention in the 2006 election under the current provisions of article VI of the Colorado Constitution.

To the contrary, the actual wording of Initiative #75 is prospective in nature: "ANYONE WHO HAS SERVED TWELVE YEARS OR MORE AT ONE COURT LEVEL SHALL NOT BE ELIGIBLE FOR ANOTHER TERM AT THAT LEVEL." (Emphasis added.) The word "eligible" pertains to qualifying for the next election at which the court of appeals judge or supreme court justice may stand for retention, as set forth in Colorado Constitution article VI, section 25, after Initiative #75 becomes effective. At such a retention election, a court of appeals judge or justice who has not served a total of twelve years in the office, if retained, would be placed on the four-year term track that Initiative #75 proposes.

Giving effect to the plain language of Initiative #75, as we must in ascertaining its intent and meaning for the purpose of reviewing the Title Board's action, In re Title, Ballot Title

1997-98 No. 30, 959 P.2d 822, 825 (Colo. 1998), we conclude that this initiative would be prospective in its operation if voters adopt it. Accordingly, we reject Aisenberg's contention that its adoption would cut short the terms of office of currently serving court of appeals judges and supreme court justices previously approved by voters on retention and the terms of those judges and justices who are retained in office by the voters at the 2006 election. The Title Board was not required to bring such a contention to the attention of the voters in the title and ballot title and submission clause it designated and fixed for Initiative #75.

Colorado Constitution article V, section 1(5.5) requires that the one subject of an initiative shall be clearly expressed in its title, and section 1-40-106.5(1)(e)(II), C.R.S. (2005), provides that a purpose of the Title Board's role is to prevent surprise and fraud from being practiced upon voters. The Title Board has complied with these provisions in this case by fairly, clearly, and accurately reflecting the actual wording, intent,

and meaning of Initiative #75.[4] This measure does not contain a surreptitious or concealed provision for cutting short the existing terms of serving judges and justices retained before or at the 2006 general election, in contrast to the measure proposed in In re Ballot Title 1999-2000 No. 29, 972 P.2d at 267.

III.

Accordingly, we affirm the action of the Title Board.

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[4] We conclude that the words "term limits" are not a prohibited slogan or catch phrase in the context of this initiative. We used those words in describing a similar initiative at issue in the In re Ballot Title 1999-2000 No. 29 case, 972 P.2d at 267. Also, the Title Board need not clarify that the provisional term a court of appeals judge or supreme court justice serves after appointment by the governor may be less than four years. Depending on the date of appointment, in relation to the next general election at which the judge or justice must stand for retention, such a term can range between two and four years depending on the particular facts.

APPENDIX

The text of Proposed Initiative 2005-2006 #75 is as follows:

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

Section 1. Article VI of the constitution of the state of Colorado is amended by the addition of a new section to read:

Section 27. Terms of office and term limits. TERMS OF OFFICE FOR COURT OF APPEALS AND SUPREME COURT JUDGES SHALL BE FOUR YEARS. AT EACH LEVEL, NO ONE SHALL SERVE MORE THAN THREE TERMS OF OFFICE. A PROVISIONAL TERM SHALL BE A TERM OF OFFICE. ANYONE WHO HAS SERVED TWELVE YEARS OR MORE AT ONE COURT LEVEL SHALL BE NOT ELIGIBLE FOR ANOTHER TERM AT THAT LEVEL.

Section 2. Repeal. Section 7 of Article VI of the constitution of the state of Colorado is repealed as follows:

Section 7. Term of office. ~~The full term of office of justices of the Supreme Court shall be ten years.~~

Proposed Initiative 2005-2006 #75[1]

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

An amendment to the Colorado constitution concerning term limits for appellate court judges, and, in connection therewith, providing four-year terms of office for justices of the supreme court and judges of the court of appeals, prohibiting a justice of the supreme court or a judge of the court of appeals from serving more than three terms, and making any justice or judge who has served more than twelve years at one court level ineligible for another term at that level.

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 term limits for appellate court judges, and, in connection therewith, providing four-year terms of office for justices of the supreme court and judges of the court of appeals, prohibiting a justice of the supreme court or a judge of the court of appeals from serving more than three terms, and making any justice or judge who has served more than twelve years at one court level ineligible for another term at that level?

[1]Unofficially captioned **"Term Limits on Court of Appeals and Supreme Court Judges"** by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.