

ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2005)  
Appeal from the Ballot Title Setting Board

IN THE MATTER OF THE TITLE, BALLOT TITLE  
AND SUBMISSION CLAUSE, FOR 2005-2006, #90

**Petitioners:**

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

and

**Respondents:**

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

and

**Title Board:**

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

2006

Mark G. Grueskin, #14621  
Daniel C. Stiles, #35695  
Isaacson Rosenbaum, P.C.  
633 17<sup>th</sup> St, Ste. 2200  
Denver, CO 80202  
Paid \$75.00

John Suthers  
Attorney General  
Maurice G. Knaizer  
Deputy Attorney General  
(303) 866-5380

Apr.	26	Petition for Review of Final Action of Ballot Title Setting Board Concerning Proposed Initiative 2005-2006 #90 ("Term Limits on Court of Appeals and Supreme Court Judges") filed.	May	17	Petitioners' Opening Brief was scanned and emailed to K. Salaz.
			May	19	Circulated
Apr.	27	ORDER -Parties file simultaneous briefs on or before 5/17/06. FURTHER ORDERED - all briefs shall be filed and served upon opposing parties by hand delivery, or through an overnight delivery service.	May	25	ORDER - the actions of the Title Board are AFFIRMED. EN BANC.
	*	Simultaneous briefs DUE: 5/17/06			
May	16	Brief of Title Board. Filed.			
May	16	Brief of Title Board, scanned and emailed to Karen Salaz.			
May	17	Petitioner's Opening Brief. Filed.			

**SUPREME COURT, STATE OF COLORADO**

Court Address:

2 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**

**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**

FILED IN THE  
SUPREME COURT

APR 26 2006

OF THE STATE OF COLORADO  
SUSAN J. FESTAG, CLERK

**▲ COURT USE ONLY ▲**

**Attorneys for Petitioners:**

**Mark G. Grueskin, #14621**

**Daniel C. Stiles, #35695**

**Isaacson Rosenbaum P.C.**

**633 17<sup>th</sup> 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.:**

**06SA131**

**PETITION FOR REVIEW OF FINAL ACTION OF  
BALLOT TITLE SETTING BOARD  
CONCERNING PROPOSED INITIATIVE 2005-2006 #90  
("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. (2005), 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 #90 ("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 #90 on April 5, 2006. The Petitioners filed a Motion for Rehearing pursuant to § 1-40-107(1), C.R.S. (2005), on April 12, 2006. The Motion for Rehearing was heard at the next regularly scheduled meeting of the Title Board on April 19, 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 #90 pursuant to § 1-40-107(2), C.R.S. (2005).

### **II. Issues Presented**

- I. Is the phrase "term limits" in the ballot title's introductory clause a catch phrase that renders the ballot title unfair or misleading, given its use as a

slogan in contemporary political debate to provoke voter emotion and encourage prejudice in favor of the issue?

II. Did the Title Board err by failing to state in the ballot title the meaning of a "provisional term?"

### **III. Supporting Documentation**


As required by § 1-40-107(2), C.R.S. (2005), 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 26<sup>th</sup> day of April, 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 26<sup>th</sup> day of April, 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 #90 ("TERM LIMITS ON COURT OF APPEALS 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

  
\_\_\_\_\_



# 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 #90".

.....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 25th day of April, 2006.

*Ginette Dennis*

SECRETARY OF STATE

PROPOSED CONSTITUTIONAL AMENDMENT FOR 2006 BALLOT  
INITIATIVE NO. 90

PROPOSERS

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 09 2006

ELECTIONS/LICENSING  
SECRETARY OF STATE

*Final #90*  
*C.R. 1:24 P.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)

Initiative No. 90  
Continued, Page 2

**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.~~

COLORADO TITLE SETTING BOARD

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In re Title and Ballot Title and Submission Clause Set For Initiative 2005-06 #90

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MOTION FOR REHEARING

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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 #90, set at the Title Board hearing held on April 5, 2006.

A. As a preliminary matter, the Petitioners urge the Board to make a technical correction to the text of the measure to reflect the Proponents' intent by deleting the following words that appear within the text distributed at the April 4 Board hearing:

(continued)

Initiative No. 90  
Continued, Page 2

B. The Petitioners also allege that the title set by the Board is misleading, inaccurate, or 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 define "provisional term of office."
3. The ballot title fails to state that this measure changes term lengths for justices of the Supreme Court by repealing Art. VI, sec. 7.
4. The ballot title fails to state that the terms of currently sitting judges and justices are shortened from their current durations to four years.

**RECEIVED**

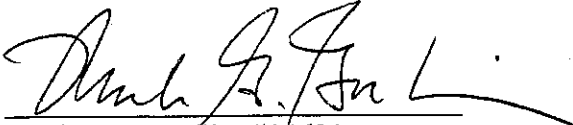
APR 12 2006

ELECTIONS / LICENSING  
SECRETARY OF STATE

*CH*  
*4:05 pm*

Respectfully submitted this 12th day of April, 2006.

ISAACSON ROSENBAUM P.C.



Mark G. Grueskin, #14621

Edward T. Ramey, #7648

633 17<sup>th</sup> 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 12th day of April, 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



## Ballot Title Setting Board

### **Proposed Initiative 2005-2006 #90<sup>1</sup>**

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, reducing the terms of office for justices of the supreme court and judges of the court of appeals to four years, requiring appellate judges serving as of January 1, 2007, to stand for retention at the next general election, if eligible for another term, 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, reducing the terms of office for justices of the supreme court and judges of the court of appeals to four years, requiring appellate judges serving as of January 1, 2007, to stand for retention at the next general election, if eligible for another term, 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.*

*Hearing April 19, 2006:*

*At request of proponent, technical corrections allowed in text of measure. (In section 1, removed all text after "read:" and before "Section 27."; 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 3:16 p.m.*

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<sup>1</sup> 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.

<p>SUPREME COURT, STATE OF COLORADO</p> <p>2 East 14<sup>th</sup> Avenue Denver, CO 80203</p>	<p>FILED IN THE SUPREME COURT</p> <p>MAY 16 2006</p> <p>OF THE STATE OF COLORADO SUSAN J. PESTAG, CLERK</p> <p>▲ <b>COURT-USE ONLY</b> ▲</p>
<p>ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2005), Appeal from the Title Board</p>	
<p>IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2005-2006 #90</p> <p>BENNETT S. AISENBERG AND FEDERICO ALVAREZ, OBJECTORS,</p> <p>Petitioners,</p> <p>v.</p> <p>JOHN K. ANDREWS, JR. AND KATHLEEN A. LECRONE, PROPONENTS, AND WILLIAM A. HOBBS, JASON DUNN, AND DAN CARTIN, TITLE BOARD,</p> <p>Respondent.</p>	<p>Case No.: 06SA131</p>
<p>JOHN W. SUTHERS, Attorney General MAURICE G. KNAIZER, Deputy Attorney General*</p> <p>1525 Sherman Street, 5<sup>th</sup> Floor Denver, CO 80203 (303) 866-5380 Registration Number: 05264 *Counsel of Record</p>	
<p><b>BRIEF OF TITLE BOARD</b></p>	

## TABLE OF CONTENTS

	PAGE
STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE FACTS.....	1
STATEMENT OF THE CASE.....	2
SUMMARY OF THE ARGUMENT .....	3
ARGUMENT .....	3
I. THE PHRASE “TERM LIMITS” IS NOT A CATCH PHRASE .....	3
II. THE TITLE BOARD PROPERLY REJECTED THE REQUEST TO DEFINE “PROVISIONAL TERM” .....	6
CONCLUSION .....	9

## TABLE OF AUTHORITIES

### PAGE

### CASES

In re the Title, Ballot Title and Submission Clause, and Summary Pertaining to the Proposed Tobacco Tax, 830 P.2d 984 (Colo. 1992) .....	8
In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 #258(A), 4 P.3d 1094 (Colo. 2000) .....	3
In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #227 and #228, 3 P.3d 1 (Colo. 2000) .....	3
In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #29, 972 P.2d 257 (Colo. 1999) .....	6
In re Title, Ballot Title and Submission Clause, and Summary Pertaining to the Proposed Initiative Designated “Governmental Business”, 875 P.2d 871 (Colo. 1994) .....	7, 8
In re Title, Ballot Title and Submission, and Summary for 1999-2000 #104, 987 P.2d 249 (Colo. 1999) .....	6

### CONSTITUTIONS

Colo. Const. art. VI .....	1
Colo. Const. art. VI, § 20(1) .....	7

### OTHER AUTHORITIES

2002 Ballot Information Booklet, Research Publication No. 502-10 (2002) .....	5
An Analysis of 1990 Ballot Proposals (1990) .....	4
An Analysis of 1994 Ballot Proposals, Research Publication No. 392 (1994) .....	4
An Analysis of 1996 Ballot Proposals, Research Publication No. 415 (1996) .....	5
Black’s Law Dictionary (7th ed. 1999) .....	8

William A. Hobbs, Jason Dunn and Dan Cartin, in their capacity as members of the Title Board (hereinafter "Board"), hereby submit their brief.

### **STATEMENT OF THE ISSUES**

1. Is the phrase "term limits" a prohibited catch phrase?
2. Did the Board err by failing to define "provisional term" in the titles?

### **STATEMENT OF THE FACTS**

The proponents, John K. Andrews, Jr. and Kathleen A. LeCrone, sponsored Initiative 2005-2006 #90. The proposed initiative adds a new section 27 to Colo. Const. art. VI. The initiative provides:

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 NOT BE  
ELIGIBLE FOR ANOTHER TERM AT THAT LEVEL.

The proposed initiative also repeals section 7 of article 6, which provides, "The full term of office of justices of the Supreme Court shall be ten years."

The Board found that the proposed initiative contained a single subject, and it set the following title:

An amendment to the Colorado constitution concerning term limits for appellate court judges, and, in connection therewith, reducing the terms of office for justices of the supreme court and judge of the court of appeals to four years, requiring appellate judge serving as of January 1, 2007, to stand for retention at the next general election, if eligible for another term, 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 contain the same language, but in the form of a question.

### **STATEMENT OF THE CASE**

The Board met on April 5, 2006 to set a title for the measure. The Board adopted a title. The Objectors filed a motion for rehearing on April 12, 2006. The Board made technical modifications to the proposed initiative and then denied the motion for rehearing. The Objectors then filed this appeal on April 26, 2006.

## SUMMARY OF THE ARGUMENT

The phrase term limits is not a catch phrase. The Board did not err by refusing to state in the ballot title the meaning of the phrase “provisional term”.

## ARGUMENT

### I. THE PHRASE “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). Whether words constitute 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 the proposal independent of the content of the proposal. It is a commonly used term that has been employed by the legislature and the courts. Colorado voters have approved term limits on members of both the executive and legislative branches irrespective of whether the phrase “term limits” was included in the title or a description of the measure. The titles and Blue Book explanations did not use the phrase “term limits” describing 1990 term limits measure. *An Analysis of 1990 Ballot Proposals* (1990) pp. 19-22.<sup>1</sup> The measure passed. The title for the 1994 term limits measure did not use the phrase “term limits” However, the Blue Book used the phrase in explaining the proposed amendment: 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.”
- “Term limits for local governments”

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

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<sup>1</sup> The Blue Book excerpts are attached to this brief.

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 background section is “Term Limits”

- The arguments for and against the measure use the phrase “Term Limits”

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

The one consistent fact is that voters approve term limits and reject removing term limits. The phrase “term limits” does not generate support for or against a measure. Based upon prior election results, it is the concept behind the phrase that matters to Colorado voters.

The Objectors presented evidence that proponents used the phrase “term limits” in some 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 1994, 1996 or 2002 elections were influenced by the phrase.

Finally, the phrase is nothing more than a commonly-used, shorthand reference to describe the provision. For example, this Court has used the phrase in analyzing prior measures seeking to impose judicial term limits. *In re Title, Ballot Title and Submission, 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”). The phrase is nothing more than a descriptive term.

## **II. THE TITLE BOARD PROPERLY REJECTED THE REQUEST TO DEFINE “PROVISIONAL TERM”.**

The Objectors also contend that the Board erred by failing to state in the title the meaning of a “provisional term”. For the following reasons, the Court must reject this argument.

The proposed measure states that a term of office for justices and appellate judges is four years. It further provides that “a provisional term shall be a term of office.” The measure itself does not define “provisional term”. Colo. Const. art. VI, § 20(1) does define a “provisional term”. It states that a judge or justice appointed to fill a vacancy “shall hold office for a provisional term of two years and then until the second Tuesday in January following the next general election.” Thus, depending upon the timing of the appointment, a provisional term may last from two years to one day less than four years.

The Objectors ask that the phrase “provisional term” as used in § 20(1) be defined or explained in the title. A definition or explanation of a phrase must be included within a title if the phrase constitutes a new or controversial legal standard which would be of concern to all those interested in the issue or if it is a term which is not within the common understanding of voters. *In re Title, Ballot Title and Submission Clause, and Summary Pertaining to the Proposed Initiative Designated “Governmental Business”*, 875 P.2d 871, 877 (Colo. 1994). The phrase “provisional term” is neither.

It cannot be disputed that “provisional term” is not a new or controversial legal standard. The proposed initiative merely incorporates a term that is already a part of the state constitution.

The phrase is certainly within the common understanding of most voters. “Provisional” means “temporary” or “conditional”. *Black’s Law Dictionary* (7<sup>th</sup> ed. 1999) 1240. Voters will understand that a “provisional term” is something less than a full and complete term. “There is nothing novel or cryptic” about the term. *Governmental Business*, 875 P.2d at 877. Inclusion of language explaining or defining the term “would increase the length of the title and ballot title and submission clause while providing little information that would advance the voters’ understanding of the initiative.” *In re the Title, Ballot Title and Submission Clause, and Summary Pertaining to the Proposed Tobacco Tax*, 830 P.2d 984, 990 (Colo. 1992). An explanation of the term would not enhance voter understanding because the time of service under a provisional term depends upon the time at which the judge is appointed.


The proposed initiative seeks to shorten the length of terms from ten years to four years and to limit to three the number of such terms. The sentence that makes a provisional term a full term is a minor part of the proposal. It does nothing more than fill a minor gap.

The Court should reject the Objectors’ contention.

## CONCLUSION

For the reasons set forth in this Brief, the Court must affirm the action of the Board.

JOHN SUTHERS  
Attorney General

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

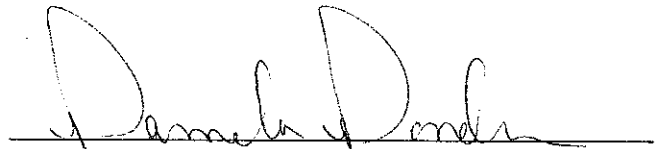
CERTIFICATE OF SERVICE

This is to certify that I have duly served the within BRIEF OF TITLE BOARD  
upon all parties herein by depositing copies of same in the United States mail, Express  
Mail postage prepaid, at Denver, Colorado, this 16<sup>th</sup> day of May 2006 addressed as  
follows:

Mark G. Grueskin  
Daniel C. Stiles  
Isaacson Rosenbaum, P.C.  
633 17<sup>th</sup> St., Suite 2200  
Denver, CO 80202

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

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

A handwritten signature in cursive script, appearing to read "Daniel C. Stiles", is written over a horizontal line.

1990

## Limitation of Terms

# AMENDMENT NO. 5 — CONSTITUTIONAL AMENDMENT INITIATED BY PETITION

## Limitation of Terms

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**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 Representatives	4.5 years (2.3 terms)
State Senators	6.4 years (1.6 terms)
Executive Branch 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:

	<u>Colorado Congressional Delegation</u>		<u>General Assembly (100 members)</u>		<u>Executive Branch Elective Office</u>
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:

	<u>Colorado Congressional Delegation</u>		<u>General Assembly (100 members)</u>		<u>Executive Branch Elective Office</u>
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

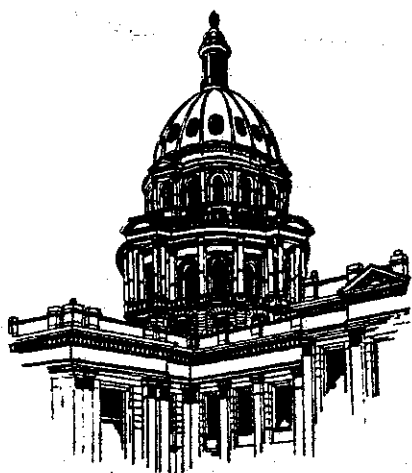
1) This measure should be rejected because it fails to address what ails our political system. The problems of corruption and incumbency advantage will persist even if term limitations are instituted. If our aim is to have more competitive elections and to limit the advantages of the incumbent, we can 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 officeholders' 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**

#### AMENDMENT 17 - TERM LIMITS

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

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**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.

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**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 not 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.

## AMENDMENT 17 - TERM LIMITS

extending term limits to local officials, reducing the consecutive terms permitted for members of the U.S. House of Representatives, and limiting terms of the two elected state 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 U.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 an election is seen. Political parties will work harder at finding serious candidates when an election race is competitive and not looked at as a "throwaway" campaign. With a three-term limit, each of the elections can be vigorously contested. The problem with the six-term limit is that the first and last elections may be competitive but, in any instances, the elections in between will not be as competitive because of the advantages of incumbency. Re-election of members of Congress is almost automatic, and challengers rarely defeat incumbents.

3) By implementing term limits, service in the U.S. Congress will be regarded as public service, not as a career. The three-term limit will provide the opportunity for the House of Representatives to become a citizen legislature. Many qualified individuals 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 representation resulting from term limitations, especially a three-term limit, will bring more "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 U.S. Congress and restore the idea that the U.S. House of Representatives is a legislative body of the people that acts as a barometer of public concern. A six-term House limit does nothing to change congressional incumbency because the average member of years served in the U.S. House of Representatives is 10.1 years. For Colorado 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 members.

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 term limits, there will be a reduction in the importance of the seniority system. Legislators will no longer need to serve multiple terms in order to be influential.

### Arguments Against

1) An additional reduction in the terms that members of the Colorado delegation to the U.S. House of Representatives may serve from six to three consecutive terms could mean that Colorado's already limited influence in that chamber would be further weakened. This would occur until other states, particularly the largest states, adopt a similar limitation. The prospect of other states doing this may be some years away. While 15 states have adopted term limits for their members of the U.S. House of Representatives, 35 have not yet acted. By adopting a three-term limit, the Colorado delegation will be subject to more severe limitations than are found in 41 states. It may be appropriate to have a limit on consecutive terms that is equivalent to two terms (12 years) 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 offices rather than simply authorizing local citizens to impose local limits where needed or desired. The statewide mandate imposes uniform term limits on thousands of elected offices throughout the state. Taxpayers who wish to repeal or modify the state mandated limits must go to the trouble, time, and expense of conducting a separate

## AMENDMENT 18 - STATE MEDICAL ASSISTANCE - REPAYMENT

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.

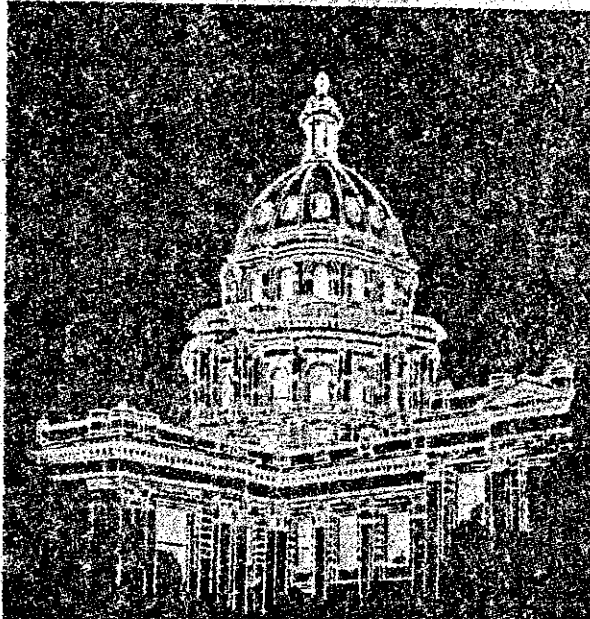
## AMENDMENT 18 - STATE MEDICAL ASSISTANCE - REPAYMENT

**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;

# LEGISLATIVE COUNCIL OF THE COLORADO GENERAL ASSEMBLY



## An Analysis of 1996 Ballot Proposals

Research Publication No. 415  
1996

## AMENDMENT 12 — TERM LIMITS

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

## AMENDMENT 12 — TERM LIMITS

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).

## AMENDMENT 12 — TERM LIMITS

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.

## AMENDMENT 13 — PETITIONS

- 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;

# 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 a nuestro servicio al consumidor atendido las 24 horas al día al 303-865-2638 (en el área metropolitana de Denver) o al 1-800-837-4668 (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.

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**REFERENDUM B**  
**PUBLIC/PRIVATE OWNERSHIP OF**  
**LOCAL HEALTH CARE SERVICES**

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**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:

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**REFERENDUM A**  
**EXEMPT ELECTED DISTRICT ATTORNEYS**  
**FROM TERM LIMITS**

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**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.

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## **REFERENDUM A EXEMPT ELECTED DISTRICT ATTORNEYS FROM TERM LIMITS**

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### **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.

CERTIFICATION OF WORD COUNT: 2,988

SUPREME COURT, STATE OF COLORADO

Court Address:

2 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

IN THE MATTER OF THE TITLE, BALLOT  
TITLE AND SUBMISSION CLAUSE FOR  
2005-2006 #90

**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

**Attorneys for Petitioners:**

Mark G. Grueskin, #14621

Daniel C. Stiles, #35695

Isaacson Rosenbaum P.C.

633 17<sup>th</sup> 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

FILED IN THE  
SUPREME COURT

MAY 17 2006

OF THE STATE OF COLORADO  
SUSAN J. FESTAG, CLERK

▲ COURT USE ONLY ▲

Case No.: 06 SA 131

**PETITIONERS' OPENING BRIEF**

## TABLE OF CONTENTS

STATEMENT OF ISSUES PRESENTED .....	1
STATEMENT OF THE FACTS .....	1
STATEMENT OF THE CASE .....	2
SUMMARY OF ARGUMENT .....	3
ARGUMENT .....	4
A.    The standard for review of Title Board decisions is limited .....	4
B.    "Term limits" is a prohibited catch phrase .....	5
C.    The failure to define "provisional term" in the title will leave voters wondering how judicial terms are limited by Initiative #90 .....	6
CONCLUSION .....	12

## TABLE OF AUTHORITIES

### Cases

<i>In re Proposed Initiative on "Obscenity,"</i> 877 P.2d 848 (Colo. 1994).....	11
<i>In the Matter of the Title, Ballot Title and Submission Clause, and Summary for Proposed Election Reform Amendment,</i> 852 P.2d 28 (Colo. 1993).....	5
<i>In the Matter of the Title, Ballot Title, and Submission Clause for 1999-2000 #104,</i> 987 P.2d 249 (Colo. 1999).....	11
<i>In the Matter of the Title, Ballot Title, Submission Clause, and Summary Adopted April 17, 1996,</i> 920 P.2d 798 (Colo. 1996).....	9, 10
<i>In the Matter of Title, Ballot Title and Submission Clause, and Summary for 1999- 2000 #29,</i> 972 P.2d 257 (Colo. 1999).....	12
<i>People ex rel. Lamm v. Banta,</i> 542 P.2d 377 (Colo. 1975).....	6

### Statutes and Constitutional Provisions

Colorado Constitution, Article IV, Section 1.....	8
Colorado Constitution, Article V, Section 3(2) .....	8
Colorado Constitution, Article VI, Section 20.....	7
Colorado Constitution, Article VI, Section 20(1).....	6
Colorado Constitution, Article VI, Section 7.....	1
Colorado Constitution, Article VIII, Section 11 .....	8
Colorado Revised Statutes Section 1-40-106(1).....	4
Colorado Revised Statutes Section 1-40-106(2).....	4
Colorado Revised Statutes Section 1-40-107(2).....	3, 4
Colorado Revised Statutes Section 42-4-304(20)(c)(III), 17 (1995 Supp.) .....	10
Colorado Revised Statutes Section 42-4-304(20)(c), 17 (1995 Supp.) .....	9

## **STATEMENT OF ISSUES PRESENTED**

Whether "term limits" is a prohibited catch phrase, given the way it is used in contemporary political debate by the initiative proponents in a wide variety of political messages.

Whether the title is misleading by referring to a phrase encumbered with legal jargon – "provisional term" – that voters will not understand.

## **STATEMENT OF THE FACTS**

John K. Andrews, Jr. and Kathleen A. LeCrone ("proponents") are the two registered electors who have proposed Initiative 2005-06 #90 ("#90") which limits the terms of service for justices on the Colorado Supreme Court and judges on the Court of Appeals. This measure is a variation on a previously submitted measure, Initiative 2005-06 #75 ("#75") and creates a new section 27 to Article XI of the Colorado Constitution that provides:

Effective January 1, 2007, terms of office for Court of Appeals 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 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."

Initiative #90 responds to several concerns addressed in the title challenges regarding #75 before the Title Board and the Court, including: (1) clarification that only appellate judges are affected by this measure; (2) express provision that currently sitting judges must stand for retention; and (3) change of a person's eligibility for an additional judicial term based on his or her previous judicial service of ten years (#90) as opposed to twelve years (#75).

The title set by the Title Board for #90 reads as follows:

An amendment to the Colorado constitution concerning term limits for appellate court judges, and, in connection therewith, reducing the terms of office for justices of the supreme court and judges of the court of appeals to four years, requiring appellate judges serving as of January 1, 2007, to stand for retention at the next general election, if eligible for another term, 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 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 April 5, 2006 and set a title for this measure. On April 12, 2006, Bennett S. Aisenberg and Federico C. Alvarez submitted a Motion for Rehearing, which was heard at the Board's April 19 meeting. The Board

granted in part and denied in part the Motion for Rehearing. A timely appeal of that decision was filed with the Court, pursuant to § 1-40-107(2), C.R.S.

### **SUMMARY OF ARGUMENT**

The title set by the Board is deficient in two respects. First, the proponents persuaded the Board to use "term limits" in the ballot title for #75, notwithstanding the fact that this phrase has never been used in a ballot title on this topic and is one that the proponents currently use to gain political leverage. The Board did not correct this error when it set the title for #90.

Second, the title includes the phrase "provisional term" as the equivalent of a full term. However, without thumbing through the Colorado Constitution to uncover the relevant definition, voters will not know what this phrase means. The Board did not include this phrase in the title it set for #75 and, in fact, argued that it would be misleading to do so. Having reversed course without providing any clarifying language to assist voters in understanding this further limitation on judicial service, the Board erred.

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

## ARGUMENT

### A. The standard for review of Title Board decisions is limited.

A measure's ballot title need not address every detail of an initiative. It must, however, be:

- fair, § 1-40-106(1), C.R.S.;
- not misleading, § 1-40-106(2), C.R.S.;
- stated so that the meaning of a "yes" or "no" vote is apparent to voters, *id.*;
- set forth so that it clearly expresses the true intent and meaning of an initiative, *id.*;
- brief, *id.*;
- not in conflict with any other title set by the board, *id.*; and
- unambiguous in stating the principle of the provision sought to be added, amended, or repealed. *Id.*

Ballot titles that fail to meet these standards must be returned to and corrected by the Board. § 1-40-107(2), C.R.S.

The Court has often noted that it is not its job to set a perfect title. But it is its responsibility to ensure that voters are not misled or confused about what a ballot measure proposes to achieve after reading the measure's title on a petition or

a ballot. *In the Matter of the Title, Ballot Title and Submission Clause, and Summary for Proposed Election Reform Amendment*, 852 P.2d 28, 33 (Colo. 1993). And in this regard, the Court is inclined to defer to the Board's decision unless there are concerns that voter understanding of a proposed measure is threatened by the language in the title. *Id.* at 32.

B. "Term limits" is a prohibited catch phrase.

The question of whether "term limits" constitutes a political slogan was briefed thoroughly in the matter now pending before this Court in *In the Matter of the Title and Ballot Title and Submission Clause for Initiative 2005-06 #75*, Case No. 06 SA 63. The Petitioners adopt by reference each of the concerns voiced there and the reasoning and case law cited in support thereof.

In sum, "term limits" is a catchphrase in light of contemporary political context, given the Proponents' use of it as an antidote to "black robed dictators" and controversial judicial decisions. The Proponents requested that the Title Board use it to replace a more neutral phrase, "limiting terms for appellate judges." And the Proponents, in what may have been more of an inadvertent than an uninformed slip of the tongue, even stated to the Board that it was a catchphrase, as noted in

the transcripts cited in the briefing on #75. For the reasons set forth in those briefs, the Board erred by including this phrase.<sup>1</sup>

C. The failure to define "provisional term" in the title will leave voters wondering how judicial terms are limited by Initiative #90.

The titles state that the measure specifies "that a provisional term constitutes a full term." However, the titles do not state what a "provisional term" is and thus leave voters in the dark as to what this phrase actually means.<sup>2</sup>

Under existing law, where a justice or a judge is appointed to fill a vacancy in office, that person holds office for a provisional term. A "provisional term" is defined as "two years and then until the second Tuesday in January following the next general election." Colo. Const., art. VI, sec. 20(1). In other words, someone who is appointed to an unexpired term does not sit until his or her predecessor would have left office, filling the rest of the ten-year term for Supreme Court justices or eight-year term for Court of Appeals judges, as is typically the case for vacancy appointments. Generally, a successor occupies office for a period of time that, in combination with his or her predecessor's time in office, constitutes a full term. *See People ex rel. Lamm v. Banta*, 542 P.2d 377, 279 (Colo. 1975). Under the judicial appointment system though, a fractional term of office – a provisional

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<sup>1</sup> This issue was raised before the Title Board. Motion for Rehearing, p. 1, ¶1.

<sup>2</sup> This issue was raised before the Title Board. Motion for Rehearing, p. 1, ¶2.

term – comes into existence and is all the time a new appointee serves. A provisional term lasts for two years plus whatever additional period exists through the first general election occurring thereafter.

While both the initiative text and the ballot title refer to "provisional term," a typical voter – and frankly, most practicing lawyers – will have no idea what this two-word phrase means. And yet it is central to the impact of this measure, as it limits judicial service to something notably less than the twelve years (three four-year terms) that the measure otherwise holds out. The ballot title fails to inform voters that a provisional term is two years plus the time until the next general election. And since there will be no Blue Book until just prior to the election, many voters will unwittingly sign petitions, bearing only the non-descriptive ballot title and equally uninformative initiative text. In subsequent months, they will discover that the measure proposes to accomplish something at odds with what they understood it to do.

In its Answer Brief in Case No. 06 SA 63 on Initiative 2005-06 #75, the Board acknowledged that the use of the undefined phrase, "provisional term," in the title carries the risk of misleading voters.

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.

Answer Brief of the Title Board at 6-7. Thus, as the Board points out, voters will presume that the judicial appointment process parallels the one used for other offices, whereby a successor completes the original officeholder's term. The Board was correct that the question about the scope of a provisional term will likely lead to voter confusion, due to the undefined reference to "provisional term."

Additionally, the fact that the Board set a title for #75 without any mention of the legal effect of a provisional term and only loosely referred to that change in the title set for #90 should set off alarms. Was the Board correct the first time? Or is it correct now? Or did it err both times by failing to tell voters what the impact of this treatment would be? The Petitioners argued in #75 that the titles needed to clearly state how a provisional term limited the actual tenure of appellate judges. *See* Opening Brief in Case No. 06 SA 63 at 11-13. The Board disagreed, as set forth above. But the Board cannot possibly be correct as to #75 – that a reference to provisional terms standing alone would confuse voters – **and** as to #90 – that a reference to provisional terms without any further clarification aids the electorate's understanding. While the mention of provisional terms in the title set for #90 is undoubtedly an improvement over the silence regarding this issue as reflected in the title set for #75, it does not go far enough if the jargon used is

incomprehensible to voters. And as the Board pointed out in its brief on #75, this phrase not only will be lost on voters; it "may actually mislead" them.

The Board and the Proponents will likely argue that it is not the Board's duty to relate existing law in the ballot title. And while the Court has noted that existing law need not be addressed in certain instances, only rarely has a reference to current law been such a pivotal provision. This seemingly technical change reduces the ability of sitting judges and justices to serve by up to 1/6 of the maximum tenure at an appellate level (2 years out of 12). In such a case, the Court has required increased clarity.

The Court considered just such a claim in *In the Matter of the Title, Ballot Title, Submission Clause, and Summary Adopted April 17, 1996*, 920 P.2d 798 (Colo. 1996). There, the Board reviewed a title set for an initiative that would have amended existing statutes concerning automobile emissions testing in six metro area counties. Because the title did not name the counties that were specified in then-existing law, the Court held that the Board erred by failing to make the limitations on the proposed change transparent to voters.

The title set by the Board in this case becomes misleading because it does not notify voters that the **current** enhanced emissions program applies only to the City and County of Denver, Boulder County, Douglas County, Jefferson County, and parts of Adams and Arapahoe Counties. § 42-4-304(20)(c), 17 C.R.S. (1995 Supp.). Because the titles and summary do not contain any indication that the geographic

area to be affected is quite limited, there is a significant risk that voters statewide will misperceive the scope of the proposed Initiative.

The proponents argue that it would have been misleading for the Board to state that the **current** enhanced emissions program is limited to the six-county Denver metropolitan area because under certain prescribed conditions, parts of additional counties may be added to the enhanced emissions testing area on a case-by-case basis by order of the Commission. § 42-4-304(20(c)(III), 17 C.R.S. (1995 Supp.). The "current" enhanced emissions program, however, applies only in the six-county area. The fact that the geographic area affected may be changed in the future does not prevent the Board from setting an accurate title at the time the Board acts.

*Id.* at 803 (citations omitted) (emphasis added).

In a similar manner, Initiative #90 proposes to use existing law to define and restrict judicial tenure. By referring only to the oblique phrase, "provisional term," however, voters will be unable to discern just how this portion of the initiative limits such tenure. Setting forth the parameters of the meaning of "provisional term" would have precisely the same effect that setting forth the then-current list of counties in the emissions program would have had: it would delineate for voters the scope of the proposed initiative.

The fact that the title refers only to language that is used in the initiative text is no defense. The Proponents admitted before the Title Board that they amended the text to incorporate the constitutional definition of provisional term. Transcript from Title Board hearing held on February 15, 2006, concerning Initiative 2005-06

#75, at 35:18-36:1 ("[A]fter the legislative review and comment we did indeed change partial to read provisional precisely so that we would be tied into an understood verbatim term already in the constitution") (included as part of record submitted in Case No. 06 SA 63). Contrary to what the Proponents suggested, "provisional term" is far from an "understood" phrase as far as the vast majority of voters are concerned. Moreover, the title cannot use phrases that are so murky as to prevent voter understanding. "The pertinent question is whether the general understanding of the effect of a 'yes' or 'no' vote will be unclear from reading the title. There may be situations, therefore, where the title and submission clause likely would create public confusion or ambiguity about the effect of an Initiative even though they merely repeat the language contained in the Initiative itself." *In re Proposed Initiative on "Obscenity,"* 877 P.2d 848, 850 (Colo. 1994) (citations omitted). Where a phrase is loaded with legal meaning which is not immediately apparent to voters, its inclusion in the title creates confusion and ambiguity and thus is unwarranted without some explanatory language. *In the Matter of the Title, Ballot Title, and Submission Clause for 1999-2000 #104,* 987 P.2d 249, 260 (Colo. 1999).

In the sphere of terms for justices and judges, the Court has previously noted that the period comprising a partial term must be part of the information the Board

gives to voters. In *In the Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000* #29, 972 P.2d 257 (Colo. 1999), the Court noted that the measure then before it, like #90, counted a partial term as a full term. Judges and justices were limited to three four-year terms, like #90, 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. *Id.* 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.* If it was incumbent on initiative proponents to be clear about what a partial term was and how it affected permissible period of tenure on the bench in #29, the same principle applies as to #90. Accordingly, the Board should be ordered to correct this defect in the title set on this measure.

## CONCLUSION

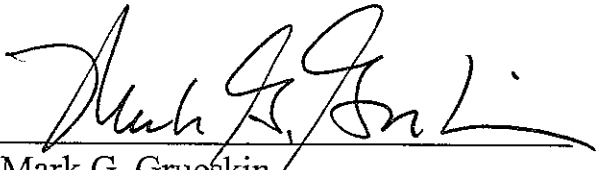
The Board continued one error it made in setting a title on #75 by including the phrase, "term limits," which is a prejudicial political slogan. It has been used by Proponents even at this early stage in ways that make it clear that the phrase, "term limits" will be a political fulcrum used throughout this debate.

The Board also compounded an error it made in setting the title on #75 by referring to "provisional terms" without giving voters any hint about what a provisional term is. By employing a phrase that has no inherent meaning or relevance to voters, the Board ignored one of its primary responsibilities and set an unclear title.

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

Respectfully submitted this 17<sup>th</sup> day of May, 2006.

**ISAACSON ROSENBAUM P.C.**

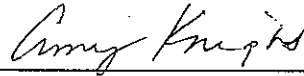
By:   
Mark G. Grueskin  
Daniel C. Stiles

**ATTORNEYS FOR PETITIONERS**

### CERTIFICATE OF SERVICE

I hereby certify that on this 17<sup>th</sup> day of May, 2006, a true and correct copy of the foregoing **PETITIONERS' OPENING BRIEF** was served via hand delivery or overnight mail, 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	

  
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SUPREME COURT, STATE OF COLORADO  
TWO EAST 14<sup>TH</sup> AVENUE  
DENVER, COLORADO 80203

Case No.06SA131

ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2),  
C.R.S. (2005)  
Appeal from the Ballot Title Setting Board

IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE, FOR  
2005-2006, #90

**Petitioners:**

BENNET 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.

**ORDER OF COURT**

Upon consideration of the Petition for Review,  
together with briefs filed herein, and now being sufficiently  
advised in the premises,

IT IS ORDERED that the actions of the Title Board are  
AFFIRMED.

BY THE COURT, EN BANC, MAY 25, 2006.



Copies mailed via the State's Mail Services Division on 5-25-06 EAC

Maurice G. Knaizer,  
First Assistant AG  
State Services Section  
Public Officials Unit

Mark G. Grueskin  
Daniel C. Stiles  
Isaacson Rosenbaum, P.C.  
633 17<sup>th</sup> St., Suite 2200  
Denver, CO 80202

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

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