

Supreme Court, State of Colorado
Colorado State Judicial Building
2 East 14th Avenue, Suite 400
Denver, CO 80203

ORIGINAL PROCEEDING PURSUANT TO
C.R.S. § 1-40-107(2), C.R.S. (2007).

Petitioner:
Steve C. Briggs, Objector

v.

Respondents:
Cliff Dodge and Amy Rathburn, Proponents

v.

Title Board:
William Hobbs, Daniel Domenico, and Jason Gelender

Attorneys for Petitioner:

Jason R. Dunn
BROWNSTEIN HYATT FARBER SCHRECK LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202-4432
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FILED IN THE
SUPREME COURT

MAY 13 2011

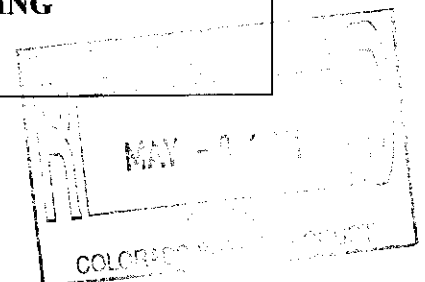
OF THE STATE OF COLORADO
SUSAN J. FESTAG, CLERK

▲ COURT USE ONLY ▲

Case Number:

11SA137

**PETITION FOR REVIEW OF FINAL ACTION OF
BALLOT TITLE SETTING BOARD CONCERNING
PROPOSED INITIATIVE 2011-2012 #21**



Petitioner Steve C. Briggs, respectfully petitions this court to review the title, ballot title, and submission clause set by the Ballot Title Setting Board for Proposed Initiative 2011-2012 #21 (“Initiative” or Initiative 21”).

I. PROCEDURAL HISTORY AND BOARD ACTION

Proponents Cliff Dodge and Amy Rathburn proposed Initiative 21, and the Board conducted its initial public hearing on April 20, 2011. Petitioner attended the hearing and challenged the Initiative, which is a copy of Senate Concurrent Resolution 11-001 (“SCR 11-001”) except that it adds four words, “or statutory tax increase.” This would increase the percentage of votes required to approve all tax increases under TABOR from fifty to sixty percent. Petitioner contended that with those additional four words the Initiative adds a separate subject in violation of the single subject requirement, contains two incongruous subjects, and is a surreptitious measure that will confuse and surprise the voters. The Board rejected the challenge and set a title, ballot title, and submission clause.

Petitioner timely filed a motion for rehearing. The Board held a hearing on the motion on May 4, 2011, and reaffirmed its decision. Petitioner the next day requested a certified copy of the record, which Petitioner received on Monday, May 9, 2011. This Petition for Review is timely, pursuant to C.R.S. §1-40-107(2).

II. ISSUES PRESENTED FOR REVIEW

1. Did the Title Board err in concluding that the Initiative contains only one subject when it combines a measure seeking to amend the general procedures for initiated and referred constitutional amendment with a measure seeking to amend the requirements for the specific subject of statutory tax increases?

2. Did the Title Board err in concluding that the Initiative does not combine incongruous subjects when one measure seeks to protect legislative authority from further limiting constitutional amendments, while the other measure seeks to constrict legislative authority to generate revenue through statutory tax increases?
3. Did the Title Board err in concluding that the Initiative does not combine incongruous subjects when one measure seeks to expand voter authority for initiated statutes while the other seeks to constrict voter authority for statutory tax increases?
4. Did the Title Board err in concluding that the Initiative does not combine incongruous subjects when the Initiative seeks to combine a widely supported referendum, which the Proponents publically oppose, with another measure, which Proponents support, thereby enlisting the first to secure enactment of the second?
5. Did the Title Board err in concluding that the Initiative is consistent with the intent of the single subject requirement when the Proponents copied verbatim a pending legislative referendum with one purpose but added four additional words with a contradictory purpose, creating a surreptitious measure intended to confuse and surprise voters?

III. DOCUMENTS SUBMITTED IN SUPPORT OF PETITION

In addition to a single certified copy of the record (including audio of both the April 20 and May 4 Title Board hearings) that has been filed with the original of this Petition, Petitioner submits the following documents:

- Exhibit 1: Initiative 21, with the titles and submission clause set by the Board.
- Exhibit 2: Petitioner's Motion for Rehearing.
- Exhibit 3: Ruling on Motion for Rehearing.
- Exhibit 4: Senate Concurrent Resolution 11-001, as introduced in the Senate
- Exhibit 5: Fact Sheet and List of Organizations Supporting SCR 11-001.
- Exhibit 6: News article regarding the Proponents opposition to SCR 11-001.
- Exhibit 7: Colorado Economic Futures Panel – Final Report (2005).

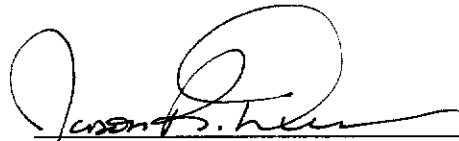
Exhibit 8: Colorado's Future Statewide Summary (April 10, 2010)

Petition notes that Exhibits 4 and 5 were submitted to the Title Board at the April 20, 2011 hearing but were not included by the Secretary of State in the certified copy of the record.

IV. RELIEF REQUESTED

Petitioner is requesting that the Supreme Court reverse the decision of the Board on the basis that the Initiative violates the single subject requirement, contains two incongruous measures, and uses its similarity to another measure to surreptitiously confuse and surprise voters.

Respectfully submitted this 9th day of May, 2011.



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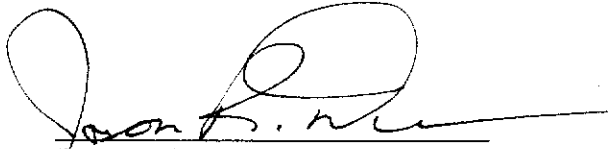
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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of May, 2011, I mailed by U.S. Mail, postage pre-paid, a true and correct copy of the foregoing Petition for Review to the following:

Mario D. Nicolais, Esq.
Hackstaff Law Group
1601 Blake Street, Ste. 310
Denver, CO 80202

Maurice Knaizer, Esq.
Assistant Attorney General
1525 Sherman Street, 7th Floor
Denver, CO 80203



Jason R. Dunn

13585\2\1535533.1

Ballot Title Setting Board

Proposed Initiative 2011-2012 #21¹

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

An amendment to the Colorado constitution concerning statewide ballot measures, and, in connection therewith, increasing the number of votes needed to pass a statutory tax increase or a constitutional amendment from a majority to at least sixty percent of the votes cast unless the measure only repeals all or a portion of a measure approved before 2013; requiring a minimum number of petition signatures for an initiated statutory tax increase or constitutional amendment to be gathered from voters who reside in each congressional district; and, for three years after a referred or initiated statutory law becomes effective, increasing the required vote of each house of the general assembly to change, repeal, or supersede the law from a majority to at least a sixty percent vote.

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 statewide ballot measures, and, in connection therewith, increasing the number of votes needed to pass a statutory tax increase or a constitutional amendment from a majority to at least sixty percent of the votes cast unless the measure only repeals all or a portion of a measure approved before 2013; requiring a minimum number of petition signatures for an initiated statutory tax increase or constitutional amendment to be gathered from voters who reside in each congressional district; and, for three years after a referred or initiated statutory law becomes effective, increasing the required vote of each house of the general assembly to change, repeal, or supersede the law from a majority to at least a sixty percent vote?

*Hearing April 20, 2011:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 3:00 p.m.*

¹Unofficially captioned "Ballot Measures" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

RECEIVED
MAR 25 2011

Colorado Secretary of State

BALLOT MEASURE VOTING REQUIREMENTS - INITIATIVE #21
- FINAL TEXT -

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

Section 1 (4) of article V of the constitution of the state of Colorado is amended, and the said section 1 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

Section 1. General assembly - initiative and referendum. (2.5) TO PROPOSE AN INITIATED CONSTITUTIONAL AMENDMENT OR STATUTORY TAX INCREASE ("TAX INCREASE" TO MEAN ANY ACTION INCLUDED IN SECTION 20(4) OF ARTICLE X OF THE CONSTITUTION OF THE STATE OF COLORADO, AS APPLIED TO THE COLORADO STATE GOVERNMENT) THAT IS SUBJECT TO A VOTE AT THE 2013 ODD-YEAR ELECTION OR A STATEWIDE ELECTION HELD THEREAFTER, THE MINIMUM NUMBER OF SIGNATURES BY REGISTERED ELECTORS WHO RESIDE IN EACH UNITED STATES CONGRESSIONAL DISTRICT IN COLORADO SHALL BE AN AMOUNT EQUAL TO SEVENTY PERCENT OF THE MINIMUM NUMBER OF THE TOTAL SIGNATURES REQUIRED FOR THE INITIATIVE PETITION PURSUANT TO SUBSECTION (2) OF THIS SECTION DIVIDED BY THE NUMBER OF UNITED STATES CONGRESSIONAL DISTRICTS IN COLORADO. FOR PURPOSES OF THIS SUBSECTION (2.5), THE NUMBER AND BOUNDARIES OF THE CONGRESSIONAL DISTRICTS SHALL BE THOSE IN EFFECT AT THE TIME THAT THE INITIATIVE PETITION IS FILED WITH THE SECRETARY OF STATE.

(4) (a) The veto power of the governor shall not extend to measures initiated by or referred to the people. All elections on measures initiated by or referred to the people of the state shall be held at the biennial regular general election, and all such measures shall become the law or a part of the constitution, when approved by a majority of the votes cast thereon OR, IF APPLICABLE, BY THE NUMBER OF VOTES REQUIRED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (4), and not otherwise, and shall take effect from and after the date of the official declaration of the vote thereon by proclamation of the governor, but not later than thirty days

after the vote has been canvassed. This section shall not be construed to deprive the general assembly of the power to enact any measure; EXCEPT THAT THE GENERAL ASSEMBLY SHALL NOT AMEND, REPEAL, OR OTHERWISE SUPERSEDE AN INITIATED OR REFERRED STATUTORY LAW THAT WAS APPROVED AT AN ELECTION AFTER THE 2012 GENERAL ELECTION FOR A PERIOD OF THREE YEARS FROM THE DATE THE LAW TAKES EFFECT UNLESS APPROVED BY A VOTE OF AT LEAST SIXTY PERCENT OF ALL THE MEMBERS ELECTED TO EACH HOUSE.

(b) (I) BEGINNING WITH THE 2013 ODD-YEAR ELECTION AND FOR ALL STATEWIDE ELECTIONS HELD THEREAFTER, AN INITIATED OR REFERRED CONSTITUTIONAL AMENDMENT OR STATUTORY TAX INCREASE SHALL NOT BECOME A PART OF THIS CONSTITUTION OR STATE STATUTE UNLESS APPROVED BY AT LEAST SIXTY PERCENT OF THE VOTES CAST THEREON, EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (b).

(II) EXCLUDING AN INITIATED OR REFERRED CONSTITUTIONAL AMENDMENT OR STATE STATUTE THAT REPEALS ANY PROVISION OF THE MEASURE THAT INCLUDED THIS PARAGRAPH (b), THE REQUIREMENT SET FORTH IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) SHALL NOT APPLY TO AN INITIATED OR REFERRED CONSTITUTIONAL AMENDMENT OR STATE STATUTE THAT IS LIMITED TO REPEALING, IN WHOLE OR IN PART, ONE OR MORE AMENDMENTS TO THIS CONSTITUTION OR STATE STATUTE APPROVED BY VOTERS PRIOR TO THE 2013 ODD-YEAR ELECTION.

Section 2 (1) of article XIX of the constitution of the state of Colorado is amended to read:

Section 2. Amendments to constitution - how adopted. (1) (a) Any amendment or amendments to this constitution may be proposed in either house of the general assembly, and, if the same shall be voted for by two-thirds of all the members elected to each house, such proposed amendment or amendments, together with the ayes and noes of each house thereon,

shall be entered in full on their respective journals. The proposed amendment or amendments shall be published with the laws of that session of the general assembly. At the next general election for members of the general assembly, the said amendment or amendments shall be submitted to the registered electors of the state for their approval or rejection, and such as are approved by a majority of those voting thereon OR BY THE NUMBER OF VOTES REQUIRED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (1), shall become part of this constitution.

(b) (I) BEGINNING WITH THE 2013 ODD-YEAR ELECTION AND FOR ALL STATEWIDE ELECTIONS HELD THEREAFTER, A REFERRED CONSTITUTIONAL AMENDMENT SHALL NOT BECOME A PART OF THIS CONSTITUTION UNLESS THE AMENDMENT IS APPROVED BY AT LEAST SIXTY PERCENT OF THE VOTES CAST THEREON, EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (b).

(II) EXCLUDING A REFERRED CONSTITUTIONAL AMENDMENT THAT REPEALS ANY PROVISION OF THE MEASURE THAT INCLUDED THIS PARAGRAPH (b), THE REQUIREMENT SET FORTH IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) SHALL NOT APPLY TO A REFERRED CONSTITUTIONAL AMENDMENT THAT IS LIMITED TO REPEALING, IN WHOLE OR IN PART, ONE OR MORE AMENDMENTS TO THIS CONSTITUTION APPROVED BY VOTERS PRIOR TO THE 2013 ODD-YEAR ELECTION.

HACKSTAFF LAW GROUP
Counselors. Advocates.

March 25, 2011

RECEIVED
MAR 25 2011
Colorado Secretary of State

Via E-mail: initiatives@sos.state.co.us

Scott Gessler, Secretary of State
State of Colorado
1700 Broadway, Suite 200
Denver, Colorado 80290

Re: *Proposed Ballot Measure Voting Requirements -- Initiative #21*

Dear Sec. Gessler,

I am submitting for Title Board review the above referenced proposed initiative. Included in this letter are the following: (1) Original Text Draft; (2) Amended Text Draft; (3) Final Text. This law firm represents the two ballot proponents, who are:

Aimee Rathburn
4321 S. Utica St.
Denver, CO 80236

Cliff Dodge
160 Poplar Street, Unit B
Denver, CO 80220

Please feel free to contact me if you have questions or if I may be of further assistance. I can be reached by email at mn@hackstafflaw.com or by telephone at (303) 534-4317.

Sincerely,

HACKSTAFF LAW GROUP, LLC



Mario D. Nicolais, II

1601 Blake Street, Suite 310, Denver, CO 80202 ph. 303.534.4317 fax. 303.534.4309

www.hackstafflaw.com

Page 1 of 1

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APR 25 2011

COPY

Colorado Secretary of State COLORADO TITLE BOARD

IN THE MATTER OF THE TITLE, BALLOT TITLE,
AND SUBMISSION CLAUSE FOR INITIATIVE 2010-2011 #21

MOTION FOR REHEARING

Petitioner Steve C. Briggs, a registered elector in the State of Colorado, submits this Motion for Rehearing and requests that the Title Board reverse its decision on April 20, 2011, to set a ballot title and submission clause for Initiative #21.

1. Initiative #21 contains more than one subject.

With the exception of four words, "or statutory tax increase," Initiative #21 properly addresses a single general subject: the procedures for enacting all initiatives and referenda, regardless of their subject matter, as set forth in Article V, § 1 of the Colorado Constitution. As its proponents conceded at the Title Hearing, except for those four words Initiative #21 is a copy of Senate Concurrent Resolution 11-001, which is pending in the General Assembly. If approved, SCR 11-001 will be referred to the people for the next general election. If enacted, SCR 11-001 will **increase** the protection of the legislative power vested in the general assembly.

By adding those four words, however, the proponents of Initiative #21 address an incongruous and specific subject: the manner in which the legislature may raise revenue, as set forth in the separate Article X, "Revenue." The initiative amends Article X, § 20, ¶4(a), commonly known as TABOR. If approved, Initiative #21 would appear on the ballot at the same time as SCR 11-001. If enacted, this TABOR amendment will **decrease** the protection of the legislative power vested in the general assembly.

Not only does Initiative #21 contain two different subjects, they are directly contradictory subjects. To understand fully the fundamental antagonism between the two separate measures in Initiative #21, it is necessary to understand their contradictory philosophies.

The Framers of our United States Constitution did not just create a constitutional democracy; they created a representative constitutional democracy. Recognizing the importance of this governmental structure, they provided in Article IV, § 4 as follows: **“Republican form of government – protection of states.** The United States shall guarantee to every state in this Union a republican form of government”

The Framers realized that a pure democracy can be extremely inefficient, at least on a state or federal level. There are simply too many citizens and too many, often complex, issues. They also realized that pure democracy unchecked could be its own source of mischief. As nineteenth century United States Senator John C. Calhoun later put it, “The Government of the absolute majority instead of the Government of the people is but the Government of the strongest interests; and when not efficiently checked, it is the most tyrannical and oppressive that can be devised.” Calhoun, “Against the Force Bill,” speech given on the Senate floor (Feb. 16, 1833); see generally Meriwether, Hemphill, and Wilson, eds., *The Papers of John C. Calhoun* (Columbia, SC: University of South Carolina Press, 1959).

James Madison early recognized the danger of a pure democracy, and that danger was no greater than in the area of taxation: “The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice. Every shilling with which they overburden the inferior number, is a shilling saved to their own pockets.” J. Madison, *Federalist Number 10* (Daily Advertiser, November 22, 1787). He therefore advocated for the republican, or representative, constitutional democracy described in our United States Constitution – with no exception for taxation.

Our State Constitution, in Article V, §1, has likewise created a representative form of government, as guaranteed in our United States Constitution. It vests the legislative power in the general assembly, which it exercises by enacting and changing our statutory laws. That power, however, is subject to the limitations contained in our state constitution. Thus Colorado, like the United States, is a representative constitutional democracy.

A constitution is a set of fundamental beliefs, traditions, and principles that sets forth the way a government is organized. It protects basic liberties by establishing limits on the power of those who enact statutes and administer the law. In contrast, statutes provide nuts and bolts solutions to current needs and problems, which may work in one generation or economic situation, but not the next. No characteristic of a constitution is more important than that it should be

amended only after much contemplation and discussion, and then only with the widespread consent of our citizens.

Yet our state constitution, in the same Article V, §1, contains an additional reservation on the authority of the legislature. The people have reserved the authority to propose laws and amendments to the constitution and to enact or reject the same at the polls, independent of the general assembly. Colorado has limited the General Assembly's legislative power by permitting our state constitution to be amended by a single, simple majority vote.

With the ballot initiative, the system of checks and balances inherent in our legislative process is bypassed. When used properly and sparingly, the ballot initiative provides a different kind of check on our representative form of government. However, experience has shown how easily this manner of amending our state constitution can be abused.

Of all fifty states, the Colorado Constitution is the easiest to amend through the initiative process. Because of this, special interest groups often use Colorado as a way to test the waters for their self-serving proposals. Constitutional initiatives have the same requirements as statutory initiatives, so most special interest groups use the initiative process to propose constitutional changes. These ballot initiatives, no matter how lengthy or complex, avoid the spotlight of careful debate in the general assembly and instead rely on slogans and sound bites in short television and radio commercials. Experience has shown that constitutional amendments are virtually impossible to change once they're passed.

From 1990 through 2010, there were 93 constitutional amendments on Colorado ballots. Almost \$180 million was contributed to campaigns about constitutional and statutory amendments. Additionally more than \$115 million was contributed to political committees, federal PACs, political party committees, 527 organizations, and small donor committees that weighed in on these constitutional measures. In the past ten years, Colorado voters have been asked to change the Constitution over issues like wildlife trapping, livestock regulations, and the qualifications for coroners and sheriffs.

Of the 93 proposed constitutional amendments considered by voters, only 40 have been approved. Of those that have passed, some have resulted in complex and sometimes conflicting budget provisions, with far-reaching unintended consequences.

As a partial response to the abuse of the initiative process, our state constitution, in Article V, §5.5, and Article XIX, §2(3), now limits a proposed measure to one subject. The "subject" in this context is "the matter of concern

over which something is created," see Black's Law Dictionary (7th ed. 1999), or a "motive or cause." See Meriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/subject>.

The only commonality between SCR 11-001 and the proposed TABOR amendment is a required 60% vote. The Title Board focused on that one commonality in setting a title for Initiative 21. That commonality, however, is not a "single subject." Rather, that is the mechanism for addressing the subjects of two separate and unrelated measures. The first is the constitutional initiative and referendum procedures, regardless of subject matter. The "matter of concern," or "cause," is to **protect** legislative authority **generally**, consistent with the intent of the Framers of the United States Constitution. The other, the TABOR amendment, is a restriction on the power vested in our elected representatives on the **specific** subject of statutory tax increases. The "matter of concern," or "cause," is to **constrict** legislative authority **to generate tax revenue**. Requiring popular votes on taxes is the exact danger described by James Madison.

Initiative #21 not only combines two measures with two separate subjects, one general and one specific, it combines two measures with directly contradictory purposes. This is precisely what the single subject requirement prohibits.

2. Initiative #21 improperly treats two incongruous subjects in the same measure by putting together in one measure two subjects having no necessary and proper connection, for the purpose of enlisting in support of Initiative #21 the supporters of SCR 11-001.

The General Assembly has addressed two of the purposes for the single subject requirement, in C.R.S. §1-40-106.5(e). The first is to forbid the treatment of incongruous subjects in the same measure, "especially the practice of putting together in one measure subjects having no necessary or proper connection, for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits." "Incongruous" means "not harmonious;" "incompatible." See Meriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/incongruous>.

Because of two years of effort by a broad based, bipartisan coalition, SCR 11-001 enjoys widespread popular support. That support was built on the earlier support for Referendum O, which was narrowly defeated in the last general election. Initiative #21 copies SCR 11-001 as it was introduced in the Senate, but then adds four words, "or statutory tax increase," in Article V, §1, ¶¶ (2.5) and (4)(a).

This same coalition and their thousands of members who support SCR 11-001 by no means support, standing alone, an amendment of TABOR to constitutionally require 60% voter approval of any tax increase. To the contrary, most would strongly oppose such a measure, standing alone. Many would oppose such a measure, standing alone, because of the fiscal crisis already gripping the state. Others would strongly oppose the measure because of its restriction on our representative democracy. Still others would strongly oppose such a measure standing alone because, whatever the perceived merits, this kind of measure has no place in a state constitution.

Initiative #21 places voters in the position of having to support a new limitation on the specific subject of tax increases, thus **constricting** legislative authority to raise revenue, which they do not support, in order to enact the proposed change in our initiative and referendum process, regardless of subject, thus **protecting** legislative authority generally, which they do support. See Submission Clause for 2009-2010 No. 91, 235 P.3d 1071 (Colo. 2010) (“The prohibition against multiple subjects ‘discourages placing voters in the position of voting for some matter they do not support to enact that which they do support.’”). The Board’s action in setting a title for Initiative #21 thus directly contravenes this important statutory limitation on the subjects that can be addressed in one initiative.

3. Initiative #21 improperly invites confusion and surprise by imbedding four words on the specific subject of tax increases in a copy of SCR 11-001.

A second purpose for requiring a single subject is set forth in C.R.S. §1-40-106.5. That purpose is to prevent surreptitious measures, so as “to prevent surprise and fraud from being practiced upon the voters.”

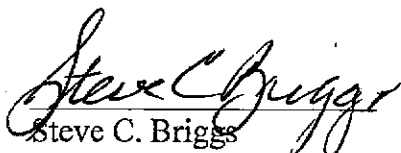
The coalition supporting SCR 11-001 has spent the last two years in community outreach and other meetings, receiving input on the wisdom and wording of the referendum. Because of these and other efforts over the last several years, the concept of amending the Colorado Constitution to make it more difficult to amend by initiative or referendum enjoys widespread support across the state and across the political spectrum. Any doubt about the intent behind Initiative #21 was clarified at the Title Board Hearing, when the proponents requested that even the Title submitted as a draft be edited so that it is identical to SCR 11-001 - other than for the addition of the four words in question.

Even if Initiative #21 could otherwise be somehow characterized as addressing one “subject,” by imbedding a “poison pill” of four words, “or statutory tax increase,” in a copy of SCR 11-001, Initiative #21 directly contravenes this important statutory proscription by creating an undue risk of

confusing and surprising the many voters who are generally aware of and support the concept of making it harder to amend the state constitution, but who are not familiar with the details of the wording. Voters may vote for neither measure or for both. In either event, the purpose of SCR 11-001 will have been circumvented. Such subterfuge is precisely what the constitutional prohibition against multiple subjects was designed to prevent. See Campbell v. Buckley, 203 F.3d 738 (10th Cir. 2000)(the single subject and title requirements serve to prevent a provision that would not otherwise pass from becoming law by “piggybacking’ it on a more popular proposal or concealing it in a long and complex initiative.”).

Petitioner requests that the Title Board recognize the true “subjects” of these two separate, contradictory measures and reverse its decision to set a ballot title and submission clause for Initiative #21.

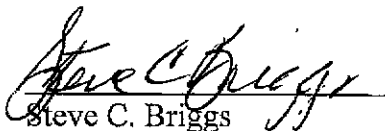
Respectfully submitted,


Steve C. Briggs
Registered Elector

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2011, a true and correct copy of the foregoing Motion for Rehearing was emailed to the following, with a hard copy place in the United States mail, postage prepaid:

Mario D. Nicolais, Esq.
mn@hackstafflaw.com
Hackstaff Law Group
1601 Blake Street, Ste. 310
Denver, CO 80202


Steve C. Briggs

STATE OF COLORADO
Department of State
1700 Broadway
Suite 200
Denver, CO 80290



Scott Gessler
Secretary of State

William A. Hobbs
Deputy Secretary of State

SUMMARY OF BOARD ACTION

Initiative Title Setting Review Board

Wednesday, May 4, 2011, 2:00 p.m.

Secretary of State's Blue Spruce Conference Room

1700 Broadway, Suite 200

Denver, Colorado

The order for the day was:

- 1. 2011-2012 #21 – “Ballot Measures”* - Rehearing**
Commenced 2:05 p.m.; Motion for Rehearing denied; adjourned 3:04 p.m.

ALL AGENDA ITEMS WERE COMPLETED.

* Unofficial caption assigned by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

Main Number (303) 894-2200
TDD (303) 869-4867
Fax (303) 869-4861

Web Site
E-mail

www.sos.state.co.us
elections@sos.state.co.us

Ballot Title Setting Board

Proposed Initiative 2011-2012 #21¹

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

An amendment to the Colorado constitution concerning statewide ballot measures, and, in connection therewith, increasing the number of votes needed to pass a statutory tax increase or a constitutional amendment from a majority to at least sixty percent of the votes cast unless the measure only repeals all or a portion of a measure approved before 2013; requiring a minimum number of petition signatures for an initiated statutory tax increase or constitutional amendment to be gathered from voters who reside in each congressional district; and, for three years after a referred or initiated statutory law becomes effective, increasing the required vote of each house of the general assembly to change, repeal, or supersede the law from a majority to at least a sixty percent vote.

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 statewide ballot measures, and, in connection therewith, increasing the number of votes needed to pass a statutory tax increase or a constitutional amendment from a majority to at least sixty percent of the votes cast unless the measure only repeals all or a portion of a measure approved before 2013; requiring a minimum number of petition signatures for an initiated statutory tax increase or constitutional amendment to be gathered from voters who reside in each congressional district; and, for three years after a referred or initiated statutory law becomes effective, increasing the required vote of each house of the general assembly to change, repeal, or supersede the law from a majority to at least a sixty percent vote?

Hearing April 20, 2011:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 3:00 p.m.

Hearing May 6, 2011:

Motion for Rehearing denied.

Hearing adjourned 3:04 p.m.

¹ Unofficially captioned "Ballot Measures" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. R11-0301.01 Ed DeCecco

SCR11-001

SENATE SPONSORSHIP

Shaffer B. and Spence, Kopp, Brophy, Heath, Jahn, King S., Morse, Roberts, Schwartz, Steadman, Tochtrop, White

HOUSE SPONSORSHIP

Murray and Court, McNulty, Acree, Barker, Baumgardner, Becker, Brown, Casso, Conti, Coram, Duran, Ferrandino, Fields, Fischer, Gardner D., Hamner, Hullinghorst, Kagan, Kefalas, Kerr A., Labuda, Lee, Levy, Liston, Massey, McCann, McKinley, Miklosi, Pace, Peniston, Priola, Riesberg, Ryden, Schafer S., Scott, Solano, Sonnenberg, Soper, Summers, Swerdfeger, Todd, Tyler, Vigil, Williams A., Wilson

Senate Committees

State, Veterans & Military Affairs

House Committees

SENATE CONCURRENT RESOLUTION 11-001

101 SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF
102 COLORADO AN AMENDMENT TO THE COLORADO CONSTITUTION
103 CONCERNING BALLOT MEASURES, AND, IN CONNECTION
104 THEREWITH, INCREASING THE NUMBER OF VOTES NEEDED TO
105 PASS A CONSTITUTIONAL AMENDMENT FROM A MAJORITY TO AT
106 LEAST SIXTY PERCENT OF THE VOTES CAST; ALLOWING A
107 CONSTITUTIONAL AMENDMENT PASSED PRIOR TO 2013 TO BE
108 REPEALED BY A MAJORITY OF THE VOTES CAST; ADDING A
109 REQUIREMENT THAT A MINIMUM NUMBER OF PETITION
110 SIGNATURES FOR A CITIZEN-INITIATED CONSTITUTIONAL
111 AMENDMENT BE GATHERED FROM VOTERS WHO RESIDE IN EACH
112 COLORADO CONGRESSIONAL DISTRICT; AND INCREASING THE
113 REQUIREMENT FROM A MAJORITY TO A TWO-THIRDS VOTE OF

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

101
102
103

THE STATE LEGISLATURE TO CHANGE, REPEAL, OR SUPERSEDE
A CITIZEN-INITIATED LAW FOR THREE YEARS AFTER IT BECOMES
EFFECTIVE.

Resolution Summary

(Note: This summary applies to this resolution as introduced and does not reflect any amendments that may be subsequently adopted. If this resolution passes third reading in the house of introduction, a resolution summary that applies to the reengrossed version of this resolution will be available at <http://www.leg.state.co.us/billsummaries>.)

This concurrent resolution makes the following changes to the state constitution related to ballot measures:

- An initiated or referred constitutional amendment must be approved by at least 60% of the votes cast thereon in order to become part of the constitution. Currently, a majority vote is necessary to pass such an amendment.
 - The increased vote requirement does not apply to an amendment that is limited to repealing, in whole or in part, one or more constitutional amendments approved by voters prior to the 2013 odd-year election; except that an amendment to repeal any provision included in this concurrent resolution requires 60% voter approval.
 - A portion of the signatures for a petition for an initiated constitutional amendment must be geographically distributed throughout the state based on a formula that requires a minimum number of the total required signatures to be from each congressional district in the state. The minimum number of the total signatures required for such a petition is equal to 5% of the votes cast in the previous election for the secretary of state, and currently there is no requirement for geographic distribution of those signatures.
 - A 2/3 vote of all members elected to each house of the general assembly is required to amend, repeal, or supersede an initiated law that was approved at an election after the 2012 general election for a period of 3 years from the date the law takes effect. Currently, initiated laws can be changed by a majority vote of such members.
-

1 *Be It Resolved by the Senate of the Sixty-eighth General Assembly*
2 *of the State of Colorado, the House of Representatives concurring herein:*

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

7 Section 1 (4) of article V of the constitution of the state of
8 Colorado is amended, and the said section 1 is further amended BY THE
9 ADDITION OF A NEW SUBSECTION, to read:

10 **Section 1. General assembly - initiative and referendum.**

11 (2.5) TO PROPOSE AN INITIATED CONSTITUTIONAL AMENDMENT THAT IS
12 SUBJECT TO A VOTE AT THE 2013 ODD-YEAR ELECTION OR A STATEWIDE
13 ELECTION HELD THEREAFTER, THE MINIMUM NUMBER OF SIGNATURES BY
14 REGISTERED ELECTORS WHO RESIDE IN EACH UNITED STATES
15 CONGRESSIONAL DISTRICT IN COLORADO SHALL BE AN AMOUNT EQUAL TO
16 SEVENTY PERCENT OF THE MINIMUM NUMBER OF THE TOTAL SIGNATURES
17 REQUIRED FOR THE INITIATIVE PETITION PURSUANT TO SUBSECTION (2) OF
18 THIS SECTION DIVIDED BY THE NUMBER OF UNITED STATES
19 CONGRESSIONAL DISTRICTS IN COLORADO. FOR PURPOSES OF THIS
20 SUBSECTION (2.5), THE NUMBER AND BOUNDARIES OF THE CONGRESSIONAL
21 DISTRICTS SHALL BE THOSE IN EFFECT AT THE TIME THAT THE INITIATIVE
22 PETITION IS FILED WITH THE SECRETARY OF STATE.

23 (4) (a) The veto power of the governor shall not extend to
24 measures initiated by or referred to the people. All elections on measures
25 initiated by or referred to the people of the state shall be held at the
26 biennial regular general election, and all such measures shall become the
27 law or a part of the constitution, when approved by a majority of the votes

1 cast thereon OR, IF APPLICABLE, BY THE NUMBER OF VOTES REQUIRED
2 PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (4), and not otherwise,
3 and shall take effect from and after the date of the official declaration of
4 the vote thereon by proclamation of the governor, but not later than thirty
5 days after the vote has been canvassed. This section shall not be
6 construed to deprive the general assembly of the power to enact any
7 measure; EXCEPT THAT THE GENERAL ASSEMBLY SHALL NOT AMEND,
8 REPEAL, OR OTHERWISE SUPERSEDE AN INITIATED LAW THAT WAS
9 APPROVED AT AN ELECTION AFTER THE 2012 GENERAL ELECTION FOR A
10 PERIOD OF THREE YEARS FROM THE DATE THE LAW TAKES EFFECT UNLESS
11 APPROVED BY A VOTE OF TWO-THIRDS OF ALL THE MEMBERS ELECTED TO
12 EACH HOUSE.

13 (b) (I) BEGINNING WITH THE 2013 ODD-YEAR ELECTION AND FOR
14 ALL STATEWIDE ELECTIONS HELD THEREAFTER, AN INITIATED
15 CONSTITUTIONAL AMENDMENT SHALL NOT BECOME A PART OF THIS
16 CONSTITUTION UNLESS THE AMENDMENT IS APPROVED BY AT LEAST SIXTY
17 PERCENT OF THE VOTES CAST THEREON, EXCEPT AS OTHERWISE PROVIDED
18 IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (b).

19 (II) EXCLUDING AN INITIATED CONSTITUTIONAL AMENDMENT THAT
20 REPEALS ANY PROVISION OF THE MEASURE THAT INCLUDED THIS
21 PARAGRAPH (b), THE REQUIREMENT SET FORTH IN SUBPARAGRAPH (I) OF
22 THIS PARAGRAPH (b) SHALL NOT APPLY TO AN INITIATED CONSTITUTIONAL
23 AMENDMENT THAT IS LIMITED TO REPEALING, IN WHOLE OR IN PART, ONE
24 OR MORE AMENDMENTS TO THIS CONSTITUTION APPROVED BY VOTERS
25 PRIOR TO THE 2013 ODD-YEAR ELECTION.

26 Section 2 (1) of article XIX of the constitution of the state of
27 Colorado is amended to read:

1 **Section 2. Amendments to constitution - how adopted.**

2 (1) (a) Any amendment or amendments to this constitution may be
3 proposed in either house of the general assembly, and, if the same shall
4 be voted for by two-thirds of all the members elected to each house, such
5 proposed amendment or amendments, together with the ayes and noes of
6 each house thereon, shall be entered in full on their respective journals.

7 The proposed amendment or amendments shall be published with the
8 laws of that session of the general assembly. At the next general election
9 for members of the general assembly, the said amendment or amendments
10 shall be submitted to the registered electors of the state for their approval
11 or rejection, and such as are approved by a majority of those voting
12 thereon OR BY THE NUMBER OF VOTES REQUIRED PURSUANT TO
13 PARAGRAPH (b) OF THIS SUBSECTION (1), shall become part of this
14 constitution.

15 (b) (I) BEGINNING WITH THE 2013 ODD-YEAR ELECTION AND FOR
16 ALL STATEWIDE ELECTIONS HELD THEREAFTER, A REFERRED
17 CONSTITUTIONAL AMENDMENT SHALL NOT BECOME A PART OF THIS
18 CONSTITUTION UNLESS THE AMENDMENT IS APPROVED BY AT LEAST SIXTY
19 PERCENT OF THE VOTES CAST THEREON, EXCEPT AS OTHERWISE PROVIDED
20 IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (b).

21 (II) EXCLUDING A REFERRED CONSTITUTIONAL AMENDMENT THAT
22 REPEALS ANY PROVISION OF THE MEASURE THAT INCLUDED THIS
23 PARAGRAPH (b), THE REQUIREMENT SET FORTH IN SUBPARAGRAPH (I) OF
24 THIS PARAGRAPH (b) SHALL NOT APPLY TO A REFERRED CONSTITUTIONAL
25 AMENDMENT THAT IS LIMITED TO REPEALING, IN WHOLE OR IN PART, ONE
26 OR MORE AMENDMENTS TO THIS CONSTITUTION APPROVED BY VOTERS
27 PRIOR TO THE 2013 ODD-YEAR ELECTION.

1 **SECTION 2.** Each elector voting at said election and desirous of
2 voting for or against said amendment shall cast a vote as provided by law
3 either "Yes" or "No" on the proposition: "Shall there be an amendment
4 to the Colorado constitution concerning ballot measures that increases the
5 number of votes needed to pass a constitutional amendment from a
6 majority to at least sixty percent of the votes cast; and that allows a
7 constitutional amendment passed prior to 2013 to be repealed by a
8 majority of the votes cast; and that adds a requirement that a minimum
9 number of petition signatures for a citizen-initiated constitutional
10 amendment be gathered from voters who reside in each Colorado
11 congressional district; and that increases the requirement from a majority
12 to a two-thirds vote of the state legislature to change, repeal, or supersede
13 a citizen-initiated law for three years after it becomes effective?"

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

Colorado's FUTURE

Support SCR 11-001

SCR 11-001, introduced by Senate President Shaffer and Senator Spence and Representatives Murray and Court, is a referred measure that asks voters to protect the Colorado Constitution by:

- ✓ Increasing the number of votes needed to pass a constitutional amendment from a majority to at least 60% of the votes cast. (Does not affect the simple majority voting requirement for initiated statutory changes.)
- ✓ Requiring that a minimum number of petitions signatures for a citizen initiated constitutional amendment be gathered from voters who reside in each Colorado congressional district. (Does not affect the signature requirements for citizen-initiated statutory changes.)
- ✓ Allowing current constitutional amendments to be repealed with the same simple-majority by which they were voted in. (Requires a 60% super majority vote to repeal constitutional amendments passed after 2012.)
- ✓ Protecting approved citizen-initiated statutory changes by requiring two-thirds vote of the legislature to amend that law during the first three years after adoption.

Colorado voters considered ninety-three constitutional amendments from 1990 through 2010. Of these proposals, fifty-three amendments received less than 50%. Of the forty amendments that received more than 50%, twenty received more than 60% of the vote.

Almost \$180 million has been spent in campaign contributions to issue committees between 2000 and 2010.

"Citizen initiatives become constitutional amendments too easily in Colorado." – Canon City Daily Record, 1-18-11

"Colorado's constitution originally set a high standard for amendments. Raising the bar helps maintain the integrity of the document and keeps it from becoming a collection of rules better made through the legislative process." – Longmont Times Call, 1-16-11

"The situation needs to be fixed before someone conjures up some other crazy, government-crippling measures to put on the ballot that could be worse than Amendments 60 and 61 and Proposition 101." – The Denver Post, 11-7-10

For more information, please contact
Brock Herzberg (303.945.1076) or Landon Gates (970.218.0284)
with Capitol Focus.

Organizations supporting SCR 11-001:

AARP Colorado
Action 22
American Council of Engineering Companies of Colorado
Associated General Contractors of Colorado
Aurora Chamber of Commerce
Club 20
Colorado Apartment Association
Colorado Association of Commerce and Industry
Colorado Association of Mechanical & Plumbing Contractors
Colorado Corn Growers Association
Colorado Association of School Boards
Colorado Bar Association
Colorado Cleantech Industry Association
Colorado Competitive Council
Colorado Concern
Colorado Contractors Association
Colorado Dairy Farmers
Colorado Egg Producers
Colorado Farm Bureau
Colorado Forum
Colorado's Future
Colorado Judicial Institute
Colorado Livestock Association
Colorado Municipal Bond Dealers Association
Colorado Municipal League
Colorado Oil and Gas Association
Colorado Pork Producers Council
Colorado Professional Fire Fighters
Colorado Ready Mixed Concrete Association
Colorado Restaurant Association
Colorado State Grange
Colorado Stone, Sand and Gravel Association
Denver Metro Chamber of Commerce
Douglas County Business Alliance –
 Castle Rock Chamber of Commerce
 Castle Rock Economic Development Council
 Highlands Ranch Chamber of Commerce
 Lone Tree Chamber of Commerce
Parker Economic Development Council
Grand Junction Area Chamber of Commerce
Green Industries of Colorado
Independent Bankers of Colorado
Jefferson County Business Lobby
Land Title Guarantee Company
League of Women Voters of Colorado
Metro North Chamber of Commerce
NAIOP – The Commercial Real Estate Development Association
Northern Colorado Legislative Alliance
 Fort Collins Chamber of Commerce
 Greeley Chamber of Commerce
 Loveland Chamber of Commerce
 Northern Colorado Economic Development Corporation
Progressive 15
South East Business Partnership
Xcel Energy

PRINCIPLES FOR PROGRESS: SHAPING THE ECONOMIC FUTURE OF COLORADO

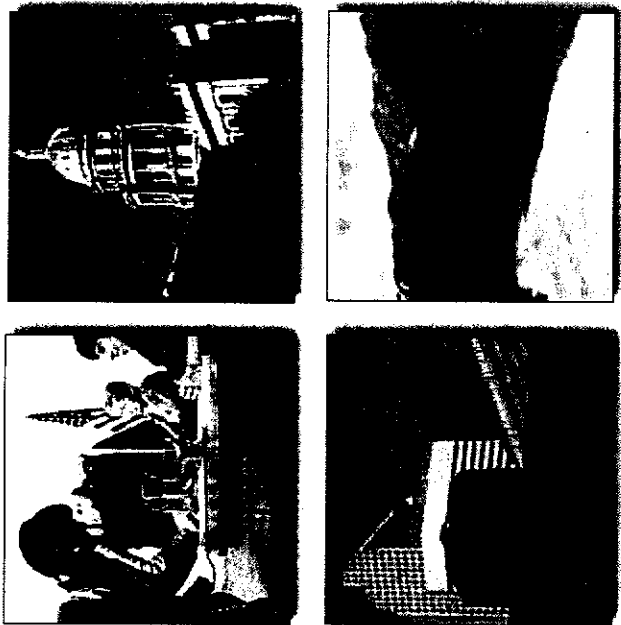
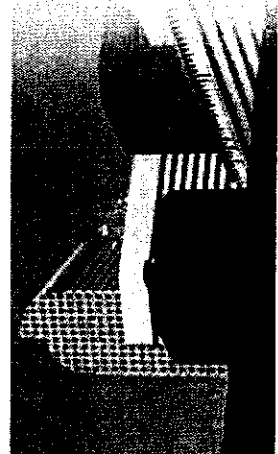


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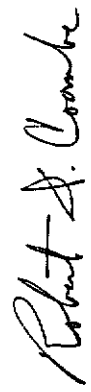


LETTER FROM THE
UNIVERSITY OF DENVER
CHANCELLOR

For more than a year now, the Colorado Economic Futures Panel has worked diligently to analyze the state's difficult fiscal situation. Sixteen accomplished business and civic leaders from across Colorado, acting as a nonpartisan task force and assisted by a talented research staff, have examined the state's fiscal structure. They scrutinized expenditures for major state and local government functions and agencies, including public (K-12) and higher education, health care, human services, corrections, transportation, courts and capital construction. This is the Panel's final report. In it, you will read of their serious concerns and comprehensive recommendations.

The University of Denver established the Colorado Economic Futures Panel and hosted its work in the belief that, as an independent institution, we are in a unique position to invest in the state that has been home to the University since our founding in 1864. Supporting the Panel's work at this critical time in Colorado's history has been an expression of our institutional commitment to work for the public good, and our belief that together we will surmount the challenges we face.

The Colorado Economic Futures Panel has completed its work. What comes of its findings and recommendations depends on the will and resolve of our leaders and the citizens of Colorado—indeed, all of us.



Robert D. Coombe
Chancellor, University of Denver

PRINCIPLES FOR PROGRESS:

SHAPING THE ECONOMIC FUTURE OF COLORADO



Overview from the Panel Chair

REPORT OF THE COLORADO ECONOMIC FUTURES PANEL

The economic future of Colorado will be written in the choices we make.

The outcome is not preordained and the stakes are high. The quality of life in Colorado is built on the foundation of the state's economy. In years to come, economic and fiscal decisions made by elected officials and voters will affect the state's success in attracting new businesses and creating jobs, navigating in a highly competitive global economy and maintaining reasonable tax levels.

These public decisions will shape nearly all aspects of life in Colorado. The quality of education, roads, mass transit, water, public health, open space, environmental protection, public safety, corrections, social services and the administration of justice all are affected by economic and fiscal policy decisions. Finding ways to make such decisions effectively has been the focus of the Colorado Economic Futures Panel (CEFP).

The Colorado Economic Futures Panel began its work with a detailed examination of the fiscal and economic characteristics of the state as a whole. As the Panel studied a broad range of issues, it became apparent that rebuilding public trust and improving the processes used for public decision-making and governance are fundamental to the long-term economic success of the state. These processes form the framework for decisions that will shape the economic future of Colorado.

Rebuilding public trust and improving the processes used for public decision-making and governance are fundamental to the long-term economic success of the state. These processes form the framework for decisions that will shape the economic future of Colorado.

No one, including the Panel, knows exactly what decisions Coloradans will face in the future. We do know, however, that the only certainty is change and that difficult and complex public policy choices inevitably lie ahead. We also are quite certain that, in a highly competitive world, the margin for error is small, and timely action is essential. To shape a successful economic future for Colorado, fiscal policy decisions will need to be made wisely, based on sound information, and capable of adjustment when conditions change, as they surely will.

In creating what we hope will be a roadmap for decision-making and governance, the Panel does not intend to tell elected representatives and citizens *what* decisions to make in the future. Rather, our focus is on *how* to build public trust and improve the processes of decision-making in a way that will enhance the economic future and quality of life in Colorado.

SUMMARY OF FINDINGS

Any study of the state must begin by recognizing that Colorado is a place of great promise, with much to celebrate. Overall, Colorado is a high-income state with relatively low tax levels and an educated citizenry. It is a state with a diverse and growing population. It is a place of breathtaking physical beauty. All that, and more, is the Colorado of today.

But what about the Colorado of tomorrow? After a year of study, the Colorado Economic Futures Panel has concluded that the promise of Colorado is in peril. Without fundamental changes to the processes of fiscal policymaking and governance, the Panel believes that the Colorado of tomorrow may be at much greater risk than is apparent on the surface today.

The threat comes not only from the immediate fiscal crises that make headlines and occupy the attention of public officials and the media. Rather, and more fundamentally, the risk comes from underlying procedural, systemic

and other factors that shape the way in which problems are understood and decisions are made. These are the drivers that determine the degree to which Colorado governments and institutions are able to meet the needs of citizens and respond to the inevitable changes that lie in our future. These are the forces that will shape the economic future of Colorado.

Over the course of its study, the Panel concluded that to create a sound economic future, and thus a favorable quality of life, four conditions are desirable. These are, in effect, principles for the progress of Colorado. They are:

- 1 An informed, flexible process for making public decisions;
- 2 A strong and effective system of representative government;
- 3 A renewal of public trust through increased government accountability;
- 4 A competitive fiscal policy based on information, shaped by an investment perspective and grounded in equity.

In relation to these principles, the Panel has identified several major impediments to effective public decision making and developed a number of recommendations. The procedural roadblocks to developing sound fiscal and economic policy in Colorado include: *A tangled, haphazard fiscal policy process; the weakening of representative government; and an erosion of public trust.*

UNTANGLING FISCAL POLICY

A most serious issue facing Colorado is its tangled fiscal policy process. Central to the problem is the practice of making fiscal policy by public referendum through amendments to the Colorado Constitution. It is a haphazard approach where citizens are asked to make major fiscal decisions in isolation, based on one-sided "facts" provided by proponents and opponents. Making fiscal policy by referendum is a process where over-simplification

Making fiscal policy by referendum is a process where over-simplification and under-analysis are the established norms; where conflicting policies and unintended consequences are the logical outcomes.

and under-analysis are the established norms; where conflicting policies and unintended consequences are the logical outcomes.

In Colorado, creating fiscal policy is a process that can be initiated by the legislature, an in-state or out-of-state interest group or anyone else. The signature threshold to place a measure on the ballot in Colorado is lower than other states, and proponents can hire people to obtain signatures. There is no requirement to inform voters in a thoughtful and balanced way about the long-term implications of the proposal. Proponents and opponents need only present their own points of view.

While newspapers and other media may try to provide analysis, their work is often overwhelmed by 30-second sound bites, last minute barrages of pre-recorded telephone calls to voters and mountains of electioneering mail. The marketing system for public policymaking by constitutional amendment is biased against providing voters with anything resembling complete disclosure.

Once a policy has been established by this idiosyncratic process it is, effectively, cast in concrete. No one, not even duly elected officials, can change the policy except by going through another cumbersome election process, which can take years, as well as millions of dollars, to complete. The policy can't be changed—even if it doesn't work as intended. It can't be adjusted to recognize unintended consequences or the existence of other, conflicting policies. It can't be amended to meet new circumstances such as a constantly changing economic landscape or competition from other states or nations.

The result is the worst of all worlds—a random decision-making process that denies citizens meaningful information and then produces results that are extremely difficult to change. In a highly competitive world, this process of decision-roulette is unlikely to result in a winning number for Colorado

citizens or businesses. For these reasons the Panel recommends that *future fiscal policies not be placed in the Colorado Constitution* but be enacted statutorily where they can more easily be adjusted as changing conditions require.

The decision-making straitjacket created by placing fiscal policies in the constitution is so dangerous that the Panel further recommends that existing *fiscal limitations and mandates be removed from the constitution*, as difficult as that process may be, and reestablished by statute. This might be done through a process of sunsetting existing constitutional provisions and converting them to statutes, either by constitutional convention or other appropriate means.

The Panel believes that the Colorado Constitution should contain only the fundamental rules of governance and, like the U.S. Constitution, should not be easy to change. Therefore the CEFP recommends *more rigorous standards to amend the Colorado Constitution*.

Although the Panel believes that the Colorado Constitution should not be easy to amend, and is not the proper vehicle for fiscal policy, the Panel does believe that the right of citizen initiative and referendum should be protected. The issue here is, of course, one of balance. Citizens must have the right to initiate action when necessary, but the process should not be so easy as to encourage inappropriate use.

STRENGTHENING REPRESENTATIVE GOVERNMENT

The practice of establishing fiscal policy by constitutional amendment has weakened representative government in Colorado by taking the most important fiscal decisions out of the hands of elected officials. We have put the state on autopilot, locked into a long-term course based on ideas of

The practice of establishing fiscal policy by constitutional amendment has weakened representative government in Colorado by taking the most important fiscal decisions out of the hands of elected officials.

yesterday that have been frozen into the Colorado Constitution. It is a system in irons that deserves to be freed.

The Panel believes, as we think most Coloradans do, that taxpayers should approve all new taxes and tax-rate increases. To balance taxpayer control over the establishment of taxes with a fiscal policy process that is flexible and reinforces the concept of representative government, the CEEFP recommends that *fiscal policies be established by statute*, not placed in the Colorado Constitution. Therefore, the Panel recommends *less* rigorous standards for statutory citizen initiatives as compared to constitutional initiatives. By so recommending, the Panel hopes to facilitate fiscal policy via statute and discourage fiscal policy via constitutional amendment.

The Colorado Economic Futures Panel believes that strong and responsive representative government is at the heart of effective governance. To support this concept, representative government in Colorado should be strengthened in two ways. First, the CEEFP recommends that, after voters approve tax levels, elected officials should be allowed to make expenditure allocation decisions unencumbered by constitutional revenue limits or expenditure mandates. Second, the Panel believes that term limits are arbitrary and inhibit effective leadership and institutional continuity. Thus, the Panel recommends *eliminating term limits for state and local elected officials*.

REBUILDING PUBLIC TRUST

As the disjointed process of creating fiscal policy through constitutional amendment has removed key decisions from elected officials, it has weakened representative government, diffused accountability and strained public trust.

The Colorado Economic Futures Panel recommends that government accountability and public trust be strengthened by significantly improving the flow of relevant, understandable information to citizens. It is certainly true that Colorado governments, agencies and institutions already produce many reports. Even amid this flurry of reporting, however, taxpayers interested in understanding where their money goes and how it is used by each taxing entity are forced to conduct a major research project. The result, not surprisingly, is a skeptical citizenry.

To provide citizens with understandable information, the CEEFP offers a number of related recommendations. The Panel recommends that all major state agencies, the courts, educational and other public institutions and local governments *be required to provide citizens with an annual performance report*. Such a report would show, among other things, the *comparative performance* of the unit benchmarked against similar units of government in terms of per capita revenues, service costs and subsidy levels. Importantly, a description of results achieved from the taxpayer's investment also would be included. In addition, the report should provide clear information as to *why the entity should not be consolidated* with similar or overlapping governments and describe how taxpayers benefit from the lack of consolidation.

The Panel also recommends that all major state agencies, the courts, educational and other public institutions and local governments be required to cooperate with the state of Colorado to produce an *online taxpayer information system*. Such a system would allow citizens to quickly estimate the total amount they are paying in taxes, which governments are receiving their tax dollars, the major services provided by those governments and the per capita costs, principal funding sources and amount of general tax subsidies, if any, for those major services.

The quality of education, roads, mass transit, water, public health, open space, environmental protection, public safety, correction, social services and the administration of justice are affected by economic and fiscal policy decisions.

Finally, the Panel recommends the establishment of an *ongoing fiscal research and reporting center*. This would be an independent, non-government and nonpartisan organization that conducts ongoing research and provides regular updates to the public on matters related to Colorado's fiscal health, state economy and other significant trends affecting the state. It could be called upon to provide the type of thoughtful, balanced, impartial analysis of issues and proposals that is so noticeably absent from the Colorado's fiscal decision-making processes.

INFORMATION, PERSPECTIVE AND EQUITY

Improving the processes of public decision-making, strengthening representative government, and rebuilding public trust by providing citizens with useful information are the foundation of a competitive fiscal policy for Colorado. To be successful, however, the fiscal policy built on this foundation needs to be based on information, shaped by an investment perspective and grounded in equity.

Developing a competitive fiscal policy begins by gaining a shared understanding of the problem to be solved. One source of impartial research to inform the policy process might be the independent, nonpartisan fiscal research and reporting center described in this report, although other sources could be used as well. However finally organized, the Panel believes the use of such an information-based approach would improve the quality of both representative and direct-democracy decisions in Colorado.

Developing effective fiscal policy also would be aided if proposed governmental expenditures were viewed from an investment perspective. A public investment perspective encourages a hardheaded analysis about how funds should be used and what returns should be insisted upon. It also

facilitates thinking about how smaller preventive investments today might avoid large remedial expenditures tomorrow. Perhaps most importantly, such a perspective focuses the legislative and public discussion on results. A *public investment perspective focusing on results* changes the dialogue and directs attention to issues of efficiency, effectiveness and the public's right to insist upon a return on tax dollars invested.

A strong economic future in Colorado requires sound policy decisions based on solid information and a businesslike return-on-investment perspective. It also requires consideration of issues of equity and disparity.

The first of these issues relates to the need to improve the external competitiveness of the state by *creating a balance between residential and non-residential (business) property taxes*. While businesses clearly must carry their fair share of the tax burden, a disproportionate reliance on non-residential property for tax revenue can reduce the attractiveness of Colorado as a place in which to do business. This, in turn, could make the state less competitive in its efforts to attract desirable companies, making it more difficult to build a strong economic future. To enhance the long-term competitive position of Colorado, consideration should be given to a policy where property taxes are equitably distributed between residential and non-residential property.

The research presented to the Panel also suggests that there are dramatic disparities in resources among counties in the state. Perhaps even greater variations exist among cities. There are many reasons for this, including the winner-take-all competition for sales tax among local governments. Sales tax battles among local governments can adversely impact land-use decisions and allow public entities to be played off against one another, often at high cost.

The economic future of Colorado, and the quality of life our children enjoy tomorrow, may hinge on our collective resolve today.

At times, local governments "win" the competition for a new sales tax source by offering expensive tax breaks or other inducements to developers and retailers. Such inducements may, or may not, serve the best interest of residents and other taxpayers in the community. In any event, one long-term effect of this process is the creation of a governmental class system where some local governments in Colorado are resource-rich while others are much poorer.

The external competitiveness of Colorado on the world economic stage is not served by a sales tax structure that creates classes of rich and poor local governments within a single state, leaving some able to serve businesses and residents well and some with much less capacity to do so.

Therefore, the Panel recommends that consideration be given to implementing a mechanism that would share incremental resources among local governments in Colorado. For example, the state could establish a mechanism to share a portion of incremental sales tax revenue increases regionally among cities and counties in Colorado while still retaining incentives for entrepreneurial local government action. Another approach might involve a general revenue sharing or equalization process utilizing state funds. Whatever approaches are used, the Panel recognizes that achieving some measure of resource balance or revenue sharing among cities and counties in the state is a complex matter. Nevertheless, it is an important issue to address.

INTERCONNECTIONS

Our study suggests that there are strong interconnections among the impediments to effective fiscal decision-making identified by the Panel. The disjointed process of placing fiscal limits and mandates in the Colorado Constitution removes key decisions from the hands of elected officials, weakening representative government, diffusing responsibility and accountability and eroding public trust. The implications include errant and inflexible

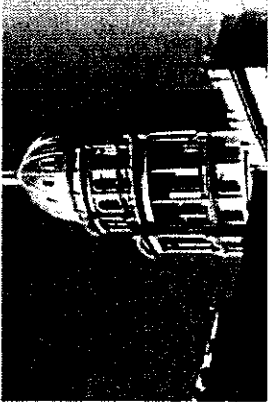
public decision-making, posing possible serious risks to Colorado's economic future. This is not a situation that anyone chose; it simply came into being—one disconnected step at a time.

MOVING FORWARD

The Colorado Economic Futures Panel recognizes that implementing the suggestions put forth in this report will not be easy. Indeed, doing so will require an uncommon coalition and a particular determination. Yet, the economic future of Colorado, and the quality of life our children enjoy tomorrow, may hinge on our collective resolve today.



Jim Griesemer, Chair
Colorado Economic Futures Panel



REPORT OF THE COLORADO ECONOMIC FUTURES PANEL

Just as running a business in the 21st century requires the ability to adapt to rapid change, so does running a government.

CREATING THE FUTURE

The Colorado of tomorrow will be significantly different from the Colorado we know today. In the past, our economic competition came from neighboring states, but as interstate highway and air transportation improved, our competition widened to include the Western United States, then the national field of play. Today, the explosive growth of telecommunications and electronic commerce is forcing Colorado to compete globally, and this competition will intensify in the years ahead.

While it is impossible to predict the impact of future changes, we can anticipate that change will occur far more rapidly than in the past. Advances in technology and telecommunications have brought the global economy to our doorstep, changing the way the world does business and further hastening the pace of change.

No longer is it necessary for all workers to be located in one place—or even in one country. Instead, many jobs, particularly knowledge-based jobs, may be performed virtually anywhere in the world, and many knowledge-based products may be transmitted instantaneously to the other side of the globe. Businesses have begun to adapt to these changes, making their organizational structures flexible, adaptable and responsive in taking advantage of all that the global economy has to offer.

Just as running a business in the 21st century requires the ability to adapt to rapid change, so does running a government. State taxes in Colorado, which rely predominately on earnings and the proceeds of sales, will generate

relatively less revenue when future knowledge-based jobs are located elsewhere in the world and purchases are made in cyberspace. State government must be able to respond to such structural changes in the economy. Unfortunately, Colorado's fiscal structure is difficult and slow to change because it is locked into the Colorado Constitution.

Why should Coloradans be concerned about the ability of state and local governments to adapt in the future? One answer lies in the connection between the sustainability of governmental services and our economic health. To remain healthy and competitive, current and future Colorado businesses look to state and local governments to provide an educated workforce, efficient transportation systems, a streamlined regulatory environment and public health and safety.

In addition, Coloradans expect their governments to meet the challenges awaiting us over the decades ahead. Preserving our environment, coping with our state's continued population growth, addressing the growing traffic congestion in Front Range and mountain areas and improving our education system to maintain the high skill level of our work force and educating the growing number of young people who enter our schools without communication and other skills is essential. In short, governmental flexibility is critically important to all Coloradans because of its impact on our quality of life for years to come.

We have determined that there are significant barriers that must be overcome to improve governmental flexibility. Overcoming these barriers is not impossible, but will take work—work largely dedicated to restoring public trust in representative democracy through better public information and accountability, and to restoring flexibility in making fiscal policy through the use of statutory rather than constitutional methods.

For these reasons, this report is focused on our fiscal policymaking processes rather than making recommendations for specific changes in tax or spending.

The inability of our state and local governments to address these and other important issues is, we feel, the result of structural rigidities and inflexibilities in our government structure.

THE PAST AND PRESENT

Colorado historically has been the envy of other states. Our natural beauty, recreational amenities and clean environment have attracted new residents each year. In addition, the stewards of our governmental institutions have provided state and local governments that are open, clean and relatively efficient. As a share of income, our combined state and local taxes rank 46th, which is low compared to other states, and our citizens have the right to vote on any new or increased taxes. Coloradans also have the right to petition their government directly through the initiative powers provided in our constitution.

From the time it was adopted, Colorado's Constitution has required its state and local governments to balance their budgets each year, and delegated to elected officials the authority to allocate public funds. *We strongly affirm the right of citizens to vote on new and increased taxes, the right of citizens to petition their government through the initiative process, the power of elected officials to allocate public funds and the requirement that our governments balance their budgets.* These distinctive qualities of Colorado policymaking must be retained as important components of the way we do public business.

But these great strengths also have opened the door to problems that must be addressed. The ease with which we can initiate constitutional amendments has resulted in explosive growth of detailed provisions in our constitution that normally would be found only in statutory law. Since 1990 alone, the Colorado Constitution has grown by more than 21,000 words, the equivalent of nearly three United States Constitutions, including its preamble and all 27 amendments. Adding to the problem, Colorado's constitutional amendments were adopted independently over time and contain many provisions that overlap or conflict with one another. Changing any of these provisions is a very time-consuming and costly process. Most problematic is Colorado's inability to respond to a rapidly changing future because of the constitutional straitjacket these provisions have created.

It is natural to ask why initiated constitutional amendments have become the policymaking tool of choice for citizens. It appears that over the course of the past few decades, there has been a steady erosion of public

trust in government, especially at the levels of government farthest removed from the everyday lives of citizens. The constitution has become a favorite and frequently used policy-making tool because currently there is nothing to prevent initiated statutes from being amended by a simple majority of the legislature. By contrast, elected officials cannot change the constitution without voter consent. Addressing and reversing this erosion of trust is of primary importance to our future. Only then can we begin to consider ways to provide the flexibility necessary for our state and local governments to thrive and prosper in the 21st century global economy.

REBUILDING THE PUBLIC TRUST

Since the founding of our nation, our form of government has been based on a system of representative democracy. We look to our elected representatives to exercise leadership in the development and protection of our physical and human infrastructures—schools, roads, public safety, health care, environmental protection and higher education. Trust and accountability are the building blocks of effective representative government.

There is evidence over the past few decades of a growing lack of trust in our elected officials. Among the ways our lack of trust has been shown is through citizen-initiated constitutional amendments and term limits.

First, we have tied the hands of state and locally elected officials with increasingly strict limitations on their powers to budget, tax and spend—among the most critical tools of public policy and governance. Second, we have imposed term limits to restrict the amount of time elected officials may serve—in the process restricting our own ability to re-elect those we trust for leadership positions. Fiscal limitations vastly reduce the array of options policymakers can consider to address state and local priorities. Term limits reduce the experience and leadership needed to understand and navigate extremely complex problems.

The "unintended consequence" of these initiatives is that our elected officials are increasingly unable to resolve major fiscal policy issues. This, in turn, further erodes citizens' confidence in our elected representatives. Knowledgeable observers of Colorado's representative institutions believe that heightened polarization also has been an unintended consequence of these limits. Polarization leads to the appearance that politicians are able to do little more than bicker and posture over critically important issues which, in turn, causes the public to have less confidence in our

Better information leads to better decisions—for individual voters and for their elected representatives.

representative government, fosters the desire for even tighter controls and further fuels the downward spiral in public trust.

How can this spiral be reversed? We recommend a two-pronged approach. First, we increase accountability by providing more practical and accessible information to the public so that citizens can better evaluate the performance of their elected representatives. Second, we return to the voters the right to exercise a more targeted and effective tool for limiting terms through the ballot box. We believe eliminating rigid term limits will give voters the right to retain those elected officials who have earned their trust through demonstrated leadership and expertise, while allowing voters to replace those officials they feel are neither responsive nor effective.

BETTER AND MORE ACCESSIBLE INFORMATION TO THE PUBLIC

We make three recommendations to improve the public's ability to track and evaluate the value they receive for their tax dollars. First, information that is provided to the public should be clear, easily understood and focused on comparative performance information. Second, the information should be made available through an online citizen information system. Third, we recommend the establishment of an ongoing nonpartisan fiscal research and reporting center.

Provide Information to the Public that is Clear and Informative. With nearly 2,600 taxing entities and an array of complex governmental accounting systems, Colorado's decentralized structure of government makes it difficult to understand how much tax is paid, to whom it goes, how the money is used and what services are provided. Our examination of these problems has led to the conclusion that trust in government would be increased if the public could more easily understand which governmental agency provides the services and how much those services cost so they can evaluate the worth of services received for their tax dollars.

Each governmental agency in Colorado is required by law to produce a variety of detailed financial plans and reports, but most citizens are unaware of what reports are created or where those reports can be found. Further compounding the problem, these documents tend to be technical and difficult to understand. While the reports usually are presented at public meetings, these events often are not well-publicized or attended. These challenges must be overcome.

Many local governments in Colorado print copies of "budget briefs," a general non-technical summary of their annual financial plan, or budget, to make it easier for citizens to understand their goals. Performance measurement, an increasingly common practice in government, can help citizens understand how well their governments are managing public resources. Incorporating these practices into an annual performance report required of every governmental agency and public institution, and distributing that information to the public, would help reverse the spiral of mistrust by highlighting performance, or lack thereof.

The Panel recommends that all major state agencies, courts, public institutions, local governments and other public entities provide citizens with a clearly worded annual performance report covering, among other things:

- * *The comparative performance of the entity benchmarked against similar units of government or institutions in terms of per capita revenues, service costs, subsidy levels, etc.;*
- * *A description of principal results achieved by the entity;*
- * *Information as to why the entity should not be consolidated with similar or overlapping governments or institutions.*

Create an Online Citizen Information System. As noted above, it is very difficult for taxpayers to know which unit of government is receiving what portion of their tax dollars, the purpose for which the funds are

used, the services received and the results achieved, particularly in light of Colorado's multiple layers and highly decentralized system of government. Citizens pay sales taxes almost daily, income taxes (paid regularly through payroll deductions), property taxes (paid at least once annually, but often less visibly through mortgage escrow accounts) and specific ownership taxes paid annually with automobile registrations. Each of these individual tax streams supports different and at times multiple levels of government as well as a myriad of services within those levels. It is no wonder that most taxpayers do not know what they pay, to whom and for what.

We believe that improved transparency and access to this information can help reverse the continuing downward spiral of public trust. This is important for at least two reasons. First, citizens have a right to know what they pay, to whom, and for what; and second, governments are missing an opportunity to better inform the taxpayer about the value received for each tax dollar. Twenty years ago, communicating information about such a complex system would have been extremely cumbersome. Today, thanks to significant increases in communications and data management technologies, it is feasible to make such information available.

We believe that better information leads to better decisions—for individual voters and their elected representatives. To that end, we recommend the development of an Internet-based, interactive taxpayer information system that will provide a taxpayer with an estimate of that individual's annual tax burden, as well as a summary of the programs and services at all levels of government that are supported by those tax dollars. Such an application would provide the public with information about the linkage between revenues and expenditures for public programs.

Establish an Ongoing Fiscal Research and Reporting Center. We further recognize that Colorado's complex system of state and local government and active participatory democracy demand ongoing, nonpartisan research. Such research would allow a better understanding of emerging issues before they become crises, as well as provide a method to evaluate proposed changes to the current system. It is critical that we address systemic questions concerning the fiscal health and tax system in the state, as well as respond with well-researched information and analysis about specific fiscal policy measures.

As a means of implementing the multiple tax policy research functions necessary to provide clear information and analysis, we recommend that an independent, nonpartisan, non-governmental organization be established to

conduct ongoing research and provide regular updates to the public on matters related to Colorado's fiscal health, other significant trends affecting the state's economy and on proposed initiatives and major legislation relating to taxation and public spending.

Other states such as Florida, Ohio and Tennessee have independent, nonpartisan governmental research groups who work to inform the public debate on issues of public tax policy. These groups complement rather than replicate the resources already available within state and local governments. In our system of combined direct and representative democracy, unique state-local interactions and multiple and overlapping limits and mandates that complicate the system of governance, ongoing research will contribute significantly to better inform the public, as well as its elected officials.

The goals of this organization should include:

- ✧ Examining the long-range impacts of proposed initiatives and major legislation relating to taxation and public spending and reporting to the public prior to any citizen referendum or legislative action;
- ✧ Performing a thorough tax burden analysis that addresses the distribution of burdens among economic sectors and individuals in Colorado. A better understanding of this will contribute to the development of a more efficient and equitable tax system for the state;
- ✧ Developing a careful and well-researched periodic evaluation of the manner in which Colorado's economy has changed and is likely to change in the coming years, and recommending ways to update our systems of financing public services to ensure that the current system remains productive and competitive in light of structural changes to the economy;
- ✧ Examining the structure of government in Colorado and recommending improvements, with a goal of maximum effectiveness, efficiency and citizen support.

ELIMINATE TERM LIMITS FOR ELECTED OFFICIALS

Colorado has a long tradition of insulating reforms to ensure that lawmaking is not the playground of special interests and that elected representatives are responsive to their constituents. Examples over the past 40 years include such laws as the Open Meetings Act (1968), The Sunshine Law (1972), and the GAVEL Amendment (1988 – "Give A Vote to Every Legislator"). These reforms have kept Colorado's system of state and local representative democracy relatively free from issues of fraud, conflicts of interest and other political scandals.

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SUMMARY OF PANEL RECOMMENDATIONS

CURRENT PROVISIONS TO BE RETAINED

The Colorado Constitution contains important fiscal policymaking requirements that should be retained.

The Panel strongly affirms the right of citizens to vote on new and increased taxes, the right of citizens to petition their government through the initiative process, the power of elected officials to allocate public funds and the requirement that our governments balance their budgets.

REBUILDING THE PUBLIC TRUST

In order to rebuild the public trust in government, better information needs to be provided to the public and elected officials need to be allowed time in office to develop expertise on complex fiscal issues.

The Panel recommends that all major state agencies, courts, public institutions, local governments and other public entities provide citizens with a clearly worded annual performance report covering, among other things:

- *The comparative performance of the entity benchmarked against similar units of government or institutions in terms of per capita revenues, service costs, subsidy levels, etc.;*
- *A description of principal results achieved by the entity;*
- *Information as to why the entity should not be consolidated with similar or overlapping governments or institutions.*

The Panel recommends the development of an Internet-based, interactive taxpayer information system that would provide a taxpayer with an estimate of that individual's annual tax burden, as well as a summary of the programs and services at all levels of government that are supported by those tax dollars.

The Panel recommends that an independent, nonpartisan, non-governmental organization be established to conduct ongoing research and provide regular updates to the public on matters related to Colorado's fiscal health, other significant trends affecting the state's economy and on proposed initiatives and major legislation relating to taxation and public spending.

The Panel recommends that the effectiveness and efficiency of representative democracy, and the right of voters to select representatives of their choosing, be restored by eliminating term limits for state and local elected officials.

CREATING FLEXIBILITY AND RESPONSIVENESS

State and local governments need to be flexible and adaptable in responding to the rapid pace of change in the 21st century.

The Panel strongly recommends that any future fiscal limits or mandates be statutory rather than constitutional.

Additionally, the Panel recommends that:

Detailed fiscal provisions be moved from Colorado's Constitution to statutory law, and that protections be created for these statutes so that they can be amended only under extraordinary circumstances.

Any index used in establishing limits or mandates be relevant to the revenue or expenditure affected.

The use of statutes rather than the constitution should be encouraged for fiscal provisions by making the following changes:

For all initiated measures, either constitutional or statutory:

- *Change the basis of the signature requirement for initiatives from votes cast for the secretary of state to votes cast for governor in the most recent gubernatorial election.*

For initiated statutory measures:

- *Require signatures equal to five percent of the total votes cast in the last state election for governor;*
- *Require a simple majority of voters to approve;*
- *Require a supermajority vote of the legislature to change any statutory measure after its enactment through direct democracy.*

For initiated constitutional measures:

- *Require signatures equal to 10 percent of the total votes in the last state election for governor;*
- *Assure a geographical distribution of those signatures by requiring that the proponents collect signatures equal to 10 percent of the district-wide vote for governor in a majority of the state's congressional districts (currently four of the seven districts);*
- *Require a supermajority of voters to approve.*

For referred constitutional measures:

- *Require a supermajority of legislators to refer a measure to the voters;*
- *Require a supermajority of voters to approve.*

OTHER IMPORTANT ISSUES THAT MUST BE CONSIDERED

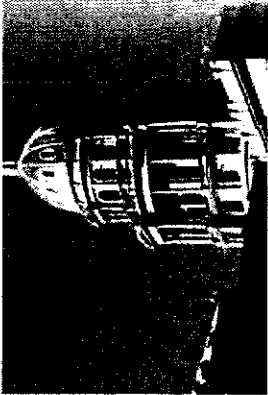
Three of the most important other issues the Panel recommends be considered include: improving equity among taxpayers; addressing local and regional fiscal disparities; and developing strategies for public investment and cost avoidance.

Taxpayer Equity: There is a substantial disparity between the property taxes paid by business and by other taxpayers. Disparities in the burden of other taxes may exist as well. *Since both businesses and other taxpayers are beneficiaries of services provided by various levels of government, issues of fairness, as well as the future business climate and economic competitiveness of Colorado, require that taxes be equitably distributed.*

Fiscal Disparities: *The Colorado General Assembly and local governments should consider implementing the following recommendations:*

- *Share sales taxes regionally among local governments in order to mitigate resource disparities;*
- *Dedicate a portion of state funds for general revenue sharing to local governments;*
- *Expand regional cooperation to lessen the tax base competition between local jurisdictions.*

Investment and Cost Avoidance: There is an increasing tendency to think of all government expenditures simply as costs to be reduced. While there is much to be said for careful scrutiny of all public expenditures, thinking of taxes simply as something to be cut, rather than an investment to be optimized, is not wise public policy. This concentration on costs instead of returns takes the focus off government performance and achieving a return on taxpayer investments. From a policy perspective, it cripples the legislative and public dialogue about how governments or institutions will achieve their objectives. It also dampens the process of linking public resources to public outcomes. *For these reasons, elected officials should strategically identify budget investments that will produce a significant return for tax dollars invested, generate long-term public benefits, or avoid future costs.*



The most significant change resulting from term limits has been the loss of experience.

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Despite the fact that Colorado has one of the most open and fair systems of representative government in the nation, we also were at the forefront of the term limit movement. Oklahoma and California joined Colorado in 1990 as the first three of 21 states to impose term limits to date. Six of those 21 states have since eliminated term limits, either through state court or legislative action. Currently, 15 states have term limits on their elected officials.

Colorado voters adopted an eight-year term limit for state and federal elected officials via a constitutional initiative in 1990; a second initiative in 1994 added local officials. The language imposing term limits for local elected officials allowed for a local override by a vote of the people within that local governmental jurisdiction. Voters have used that option to eliminate or extend term limits for some local government offices across the state; however, that option is not available for state officials. The federal courts have voided term limits for federal officials by declaring that state-enacted term limits on federal officials conflict with the U.S. Constitution. Term limits, however, remain in place for state and local elected officials.

As we studied the effects of term limits in Colorado, we discovered they have not accomplished the goals originally intended by the proponents, but instead have weakened the effectiveness of representative democracy. For example, a stated goal of term limit supporters was to reduce "careerism" and get rid of long-serving but ineffective elected officials.

While the public careers of some ineffective officials undoubtedly fell victim to term limits, the impact also caused the loss of many skilled and valued leaders.

A paper presented by the former director of the Legislative Council at a 2003 legislative symposium examined the length of terms for legislators newly elected since 1990 who had the opportunity to serve their full eight-year term of office under term limits. It showed that the average tenure for

members of the General Assembly actually *increased* after the implementation of term limits. From 1960 through 1988, the election year before term limits were adopted, the average tenure was 5.2 years. Since 1990, the year term limits were enacted, the tenure increased to six years, an increase of 15.4 percent.

There also has been virtually no effect on another major goal of the proponents of term limits—the rate of turnover. According to a 2004 study conducted by Professor John Straayer of Colorado State University, the turnover rate averaged about 30 percent each election cycle prior to term limits. After an initial jump in 1998, the year term limits first went into effect, our rate has returned to about the same as before. Re-election of those seeking another term averaged 92 percent in the decade prior to the adoption of term limits in 1990, and reached 94 percent from 1992–2002. Nor has there been much change in the composition of the legislature based on the members' gender, ethnicity, education, occupation or age.

However, the most significant change resulting from term limits has been the loss of experience—especially that of legislative leadership. The following chart compares 1997, the year before legislators were forced from office by term limits, to 2003, five years after the impact of term limits was first felt. The turnover is felt most starkly in leadership and committee expertise.

Legislative Experience of Members of the Colorado General Assembly

Year	Representatives with 6+ years of service, and Senators with 10+ in the House & Senate	
	House	Senate
1997	18 of 65 members (27.7%)	18 of 35 members (51.4%)
2003	8 of 65 members (12.3%)	9 of 35 members (25.7%)

Speaker of the House and President of the Senate: In the 18 years prior to 1998, there were two Speakers of the House, while three Senate Presidents served the prior 21 years. Since 1998, every Speaker and President has served no more than two years.

Joint Budget Committee: The turnover on the six-person Joint Budget Committee, the committee with the most influence on the day-to-day functioning of state government, averaged just one new member following each of the three election cycles prior to term limits. Continuity of membership on this important committee allowed for growth of teamwork, bipartisanship and detailed knowledge. Post-term limits, there were four new members in 1999; three new members in both 2001 and 2003; and four new members again in 2005 on the six-member committee.

While term limits have introduced new personalities, Professor Straayer's survey of a broad cross-section of legislative staff, lobbyists, legislators, members of the press and others who had in-depth knowledge of Colorado's legislature from before and after term limits identified significant problems. These close observers of Colorado's legislative process believe the consequences are visible and mostly negative. Four-fifths of those individuals surveyed believed that:

- ☐ Leaders are weaker;
- ☐ Partisanship is up;
- ☐ Civility and procedural order have suffered;
- ☐ The clout of lobbyists, staff and the governor has increased;
- ☐ Legislators are less inclined and able to address the state's major problems in a long-term fashion.

Rather than diversifying and reinvigorating Colorado's legislative body, the inflexible eight-year term limit has deprived it of experience and expertise, and deteriorated its norms, procedures and problem-solving capacity. A recent national study (*the "Joint Project on Term Limits"*) reported that other states also have experienced many negative effects on the functioning of their state legislatures. As reported in the 2005 edition of *The Book of States*, "Term limited legislatures report more general chaos, a decline in civility, reduced influence of legislative leaders and committees...." In sum, according to Professor Straayer, the data show clearly that term limits were designed to solve a problem that did

not exist and, in the process, have weakened Colorado's system of representative government.

Recognizing that the voters have expressed their support for term limits, we carefully considered our recommendation. The studies convinced us that constitutionally imposed term limits, especially at the state level where there is no option for voter override, inhibit the learning of new officials and the continuity and effectiveness of legislative and executive leadership. Since we cannot elect those who cannot run, the long-established constitutional right of voters to make a choice at the ballot box also is restricted by term limits. From a private sector perspective, no business forces its employees and leaders to resign as soon as they reach the peak of their knowledge and performance. Therefore, *the Panel recommends that the effectiveness and efficiency of representative democracy, and the right of voters to select representatives of their choosing, be restored by eliminating term limits for state and local elected officials.*

CREATING FLEXIBILITY AND RESPONSIVENESS

Over the past few decades, Colorado's citizens increasingly have sought to place fiscal policy directives in the state's constitution. The state's flexibility and responsiveness have been significantly compromised, since amending these provisions of the constitution is a cumbersome, expensive and difficult process. We struggled with the issue of how to develop needed flexibility while continuing to honor the will of the people in restraining the fiscal powers of state and local governments. After much consideration, we recommend that this dilemma be addressed through three actions.

First, we recommend that detailed fiscal provisions be moved from Colorado's Constitution to statutory law, and that protections be created for these statutes so that they can be amended only under extraordinary circumstances. Options to accomplish this objective include convening a constitutional convention, individually addressing each provision to be moved in a series of constitutional amendments, or amending the constitutional single-subject requirement to allow for a package of amendments to be proposed. The second action is the creation of requirements that any newly proposed limits and spending mandates must meet in order to allow some flexibility. The third action is to revise the initiative process to maintain the role of the constitution as the broad framework of our system of government, and not as the vehicle of choice for detailed fiscal policymaking.

MOVE DETAILED FISCAL PROVISIONS FROM THE COLORADO CONSTITUTION TO STATUTORY LAW

The fiscal provisions to be removed from the state constitution or transferred into statutory law include, but may not be limited to:

- The State Debt Limit, (Article XI, section 3), enacted in 1876;
- The Gallagher Amendment, (Article X, section 3), enacted in 1982;
- The Taxpayers Bill of Rights (TABOR), (Article X, section 20), enacted in 1992;
- Amendment 23, (Article IX, section 17), enacted in 2000.

The State Debt Limit, enacted as a part of Colorado's original 1876 constitution, prohibits state government from incurring general obligation debt. General obligation debt is backed by the credit and taxing power of the issuing jurisdiction rather than a specific revenue source. Interest expenses for general obligation debt are normally reduced by pledging the "full faith and credit" of the issuing entity. Since general obligation debt is prohibited, other mechanisms have been devised for the state to incur debt. These mechanisms generally make repayment subject to annual appropriation by the general assembly, so the debt is not viewed as a legally enforceable obligation of the state.

For this reason, the bond market views these instruments as a higher risk, driving up the interest rate. These financing mechanisms have been used since the 1980s to finance some of the state's key capital construction investments, such as prisons, highways and higher education facilities. We concluded that for the last 25 years, the state constitutional debt limit has not prevented the state from incurring debt for major capital construction projects, but simply has served to increase financing costs to the state general fund. For this reason, it should be moved to state statute, where ways can be considered by the legislature to reduce its negative impact on the general fund.

The Gallagher Amendment provides for a mechanism to reduce the property tax valuation of residential property as growth occurs, but not commercial and other classes of property. The result is that although residential property comprises nearly 78 percent of the value of all taxable property in Colorado, it bears only about 47 percent of the tax burden. Under TABOR, mill levies cannot be increased to make up for the valuation reduction without a vote, so the property tax burden on residential properties is gradually reduced and the property tax revenue for many local governments is unable to keep pace

with the rate of growth in property values. Property taxes are a major funding component of the state's Public School Finance Act, so the state must "backfill" this reduction in property taxes by increased general fund spending for schools. In addition, Amendment 23 requires per-pupil funding for public schools to increase each year. The Gallagher Amendment in combination with TABOR and Amendment 23 have teamed to increase state general fund appropriations for schools at rates greater than the rates of growth for the general fund, forcing reductions in other general fund appropriations.

The Taxpayers Bill of Rights (TABOR) limits all state spending, including general fund spending to a formula growth rate based on inflation and population. As explained above, this limit, coupled with the Gallagher Amendment and Amendment 23, results in a significant restriction of general fund flexibility.

Amendment 23 requires the state to increase per-pupil funding for the state's Public School Finance Act at the rate of inflation plus one percent through 2011, and at the rate of inflation each year thereafter. When combined with TABOR and the Gallagher Amendment, these three provisions interact to place the state general fund in a fiscal vise.

CREATE CONDITIONS THAT NEW LIMITS AND MANDATES MUST MEET

Once items are moved from the constitution to statutory law, it is critical that conditions be created to prevent the state from returning to a posture of inflexibility. To prevent this, we strongly recommend that any future fiscal limits or mandates be statutory rather than constitutional. The constitution should be reserved for broad statements of policy, with procedural detail placed in statutes. Fiscal limits and mandates must not be placed in the constitution. In addition to these parameters, we recommend that any index used in establishing limits or mandates be relevant to the revenue or expenditure affected.

MODIFY THE INITIATIVE AND REFERENDUM PROCESSES

Coloradans have an active history of direct democracy. Since 1910, the year the initiative and referendum process were adopted, there have been only six even-year elections at which voters were not asked to decide an initiated measure. Since 1980, every even-year election has included at least one initiated measure.

In the 25 years since 1980, Coloradans have amended our state constitution 47 times. By contrast, the U.S. Constitution has been amended only 27 times in more than 217 years.

The process of initiating ballot language requires collecting signatures sufficient to meet the state's mandated signature requirement. Every state that allows for initiatives requires the collection of signatures; however, the number of signatures varies from state to state. Colorado's signature threshold for constitutional initiatives of five percent of the votes for Secretary of State is the lowest in the nation when measured as a percentage of population.

Furthermore, among the direct initiative states, Colorado is the only state that does not maintain a different signature requirement for constitutional changes versus statutory changes. In our state, it is as easy to initiate constitutional amendments as it is statutory changes. Coupling this ease of amending our constitution with the general level of mistrust in government, it is no wonder that the majority of initiated measures are for constitutional change—and once language is in the constitution, the legislature cannot amend it.

Since 1980, 77 percent of all measures submitted to the voters in Colorado have been constitutional: of those, 53 percent passed. In the 25 years since 1980, Coloradans have amended our state constitution 47 times. By contrast, the U.S. Constitution has been amended only 27 times in more than 217 years, and 10 of those were passed at the same time as the Bill of Rights.

While we recognize and respect Coloradans' deeply held value for participatory democracy, we also recognize that numerous citizen-initiated constitutional amendments have had unintended consequences. Especially when they contain detailed fiscal limits and mandates that are more appropriate for statutory law, these amendments greatly impede the flexibility of representative government. To strike a balance between respecting direct democracy and the need for legislative flexibility, we recommend procedural changes to the process of direct democracy in the state, particularly when proposing constitutional measures.

Consistent with our recommendation concerning the preferred use of the statutes over the constitution—and with due respect for the tradition of

direct democracy—we recommend changes be made to the citizen initiative process, particularly in the area of proposed constitutional change. Currently there is no incentive to initiate a statutory measure when it is procedurally equivalent to initiating a constitutional one, so the following recommendations seek to make the requirements for amending the constitution more stringent than those for statutory change, providing an incentive for initiated and referred measures to be statutory rather than constitutional.

For all initiated measures, either constitutional or statutory:

- * *Change the basis of the signature requirement for initiatives from votes cast for the secretary of state to votes cast for governor in the most recent gubernatorial election.*

For initiated statutory measures:

- * *Require signatures equal to five percent of the total votes cast in the last state election for governor;*
- * *Require a simple majority of voters to approve;*
- * *Require a supermajority vote of the legislature to change any statutory measure after its enactment through direct democracy.*

For initiated constitutional measures:

- * *Require signatures equal to 10 percent of the total votes in the last state election for governor;*
- * *Assure a geographical distribution of those signatures by requiring that the proponents collect signatures equal to 10 percent of the district-wide vote for governor in a majority of the state's congressional districts (currently four of the seven districts);*
- * *Require a supermajority of voters to approve.*

For referred constitutional measures:

- * *Require a supermajority of legislators to refer a measure to the voters;*
- * *Require a supermajority of voters to approve.*

The state is operating in a 21st century economy with a mid-20th century tax system.

The change in the basis for the signature requirement from votes cast for secretary of state to votes cast for governor is consistent with requirements in other direct-initiative states. Because the gubernatorial race is the highest and most visible statewide race, it better reflects the number of active voters in Colorado.

It is important to note that the change to votes cast for governor as the basis for the signature requirement would result in an increase in the signature requirements for both statutory and constitutional initiatives. The table below summarizes the impact of that change based upon the 2002 election. If our recommendations had been in place at the time of the 2002 election, the current signature requirement for *statutory* initiatives would be 2,802 signatures higher—a 4.1 percent increase, and the signature burden for constitutional initiatives would have increased by 73,432. The increase in signatures for *constitutional* initiatives would have resulted from a combination of the change from 5 percent to 10 percent and the change of base from votes for secretary of state to governor.

OTHER IMPORTANT ISSUES TO CONSIDER

We believe that the process-oriented recommendations presented earlier hold the highest priority because, unless the structural problems in Colorado's government are addressed, dealing with urgent fiscal problems will be nearly impossible. This does not diminish the importance of also addressing fiscal problems. The panel has identified three priorities in fiscal policy that need to be addressed, including tax issues, resource disparity and development of a public investment and cost avoidance strategy.

Tax Issues

Colorado's state and local tax system is comprised of three major taxes: sales, property and income taxes. In addition, state and local governments also are financed through the imposition of a variety of fees. These taxes and fees have changed considerably in structure and relative importance over the past few decades.

Summary of 2002 Votes for Governor and Secretary of State and Resulting Actual and Recommended Signature Requirements

Votes cast for Governor	1,412,602	Votes cast for Secretary of State (SOS)	1,356,561	Current Requirement: 5% of votes for SOS	67,828	Statutory Recommendation: 5% of votes for Governor	70,630	Increase in Signature Requirement for Statutory Initiatives	2,802	Constitutional Recommendation: 10% of votes for Governor	141,260	Increase in Signature Requirement for Constitutional Initiatives	73,432
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Source: Colorado Secretary of State.

Sales Taxes

- * When the last comprehensive analysis of Colorado's public fiscal system was completed in the late 1950s, only two municipalities levied a sales tax in addition to the state's 2 percent tax; the highest combined rate in those two cities was 3 percent.
- * Today there are 299 different sales taxes being levied, ranging from one-tenth of 1 percent to 5 percent, in 48 counties, 211 municipalities and 17 special districts; the overall rate (including the state's 2.9 percent rate) reaches 10.1 percent in one jurisdiction.
- * Over the years, 67 separate exemptions from the state sales tax have been made. Local governments also have enacted some of these exemptions, but not others. The exemptions are estimated annually to total \$538 million in decreased state revenue. They increase the complexity of administering the sales tax system and alter the distribution of tax burden among individuals and sectors in the state's economy.
- * When the state sales tax was first introduced in 1935, a service tax also was enacted which imposed a levy on professional and personal services, but it was repealed in 1945. Services make up one of the fastest growing sectors of the economy, and sales taxes on services increasingly are considered in other states as a way to maintain the productivity of the system while reducing the regressivity of the sales tax.

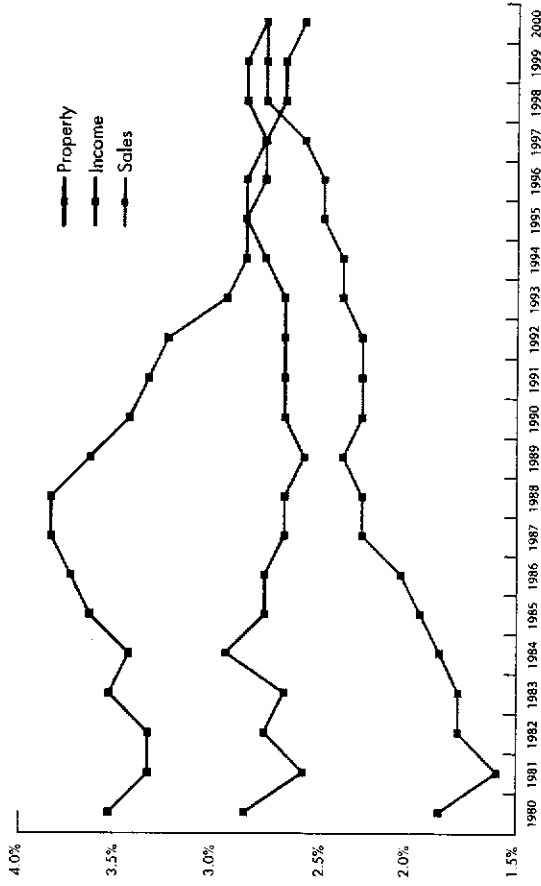
Property Taxes

- * The property tax share of total municipal tax revenue has declined from 28 percent in 1985 to 17 percent in 2001. (During that same period, the share of municipal sales tax revenue increased from 64 percent to 72 percent.)
- * Colorado is thought to have a low residential property tax burden compared to other states, and the "Gallagher" amendment has caused a shift in the burden from residential to other classes over the past 25 years. Given the same value, a residential property pays about one-fourth of the tax burden of a nonresidential property.
- * Residential personal property and business inventory have been exempted from the tax, while business-owned personal property remains taxable, discouraging industries such as manufacturing that make heavy use of equipment.

Income Taxes

- * Income tax is the major source of state general fund revenue (52 percent), more than double that of the sales tax.
- * Income tax is more volatile than other taxes in responding to economic changes, growing faster in good times and falling more precipitously in bad.
- * Colorado's definition of net taxable income is largely based on the federal definition, so when the federal definition is modified, Colorado's income tax collections either rise or fall, depending on the nature of the federal change, without any state direction or control.

THREE MAJOR TAXES AS A PERCENT OF PERSONAL INCOME:
BY TYPE OF TAX
YEARS 1980-2000



Source: Colorado Department of Revenue, Division of Property Taxation, Division of Local Government, CPEC, Bureau of Economic Analysis - revised income, September, 2004.

There are dramatic disparities in available tax base resources among Colorado counties.

User Fees and Taxes

- * There is a need to evaluate the impact of user fees on individual and business taxpayers.
- * User fees have grown considerably over the last 25 years to replace tax revenue that is bound by the various statutory and constitutional limits.

Little is known about how these changes have affected the structure and funding of state and local governments. Essentially, the state is operating in a 21st century economy with a mid-20th century tax system. Taxes may serve as either incentives or disincentives to economic growth; without careful attention, disincentives often emerge. Over time, the failure to modernize the tax system to match the emerging structure of the economy will contribute to these disincentives and weaken our state's ability to compete.

The Panel concluded that Colorado's state and local tax system needs to be examined to determine how it should be modified to meet the goals of equity in the distribution of the financial burden of government on citizens and among businesses; efficiency in minimizing negative effects of the tax system on the economy; and productivity in generating sufficient tax revenues with a minimal administrative burden on the taxpayer. There is a substantial disparity between the property taxes paid by business and by other taxpayers. Disparities in the burden of other taxes may exist as well. *Since both businesses and other taxpayers are beneficiaries of services provided by various levels of government, issues of fairness, as well as the future business climate and economic competitiveness of Colorado, require that taxes be equitably distributed.*

It has been more than 10 years since any study has been done to examine Colorado's state and local tax burdens. A comprehensive analysis of Colorado's structure of state and local government and taxes has not been done in

nearly 50 years. To our knowledge, there has never been an examination of the total tax burden on and among businesses.

ADDRESS LOCAL RESOURCE DISPARITIES IN FUNDING ESSENTIAL SERVICES

There are dramatic disparities in available tax base resources among Colorado counties—about a 20-to-1 disparity in per capita county tax bases. More significant resource disparities are suspected among city governments, and the result is a state where regions vary significantly in the level of core public services available to citizens. Many other states mitigate these local differences through a state government revenue sharing system. With the notable exception of K-12 school funding, Colorado does very little at the state level to mitigate such differences.

These disparities are further exacerbated by the degree to which municipal government in the state is reliant on locally levied and collected retail sales taxes. As a result of sales tax revenue dependence, fierce competition exists among municipalities for the tax base brought about by new retail developments. This frequently leads to annexation battles, poor land use planning between jurisdictions, and in some cases, sprawl and lawsuits.

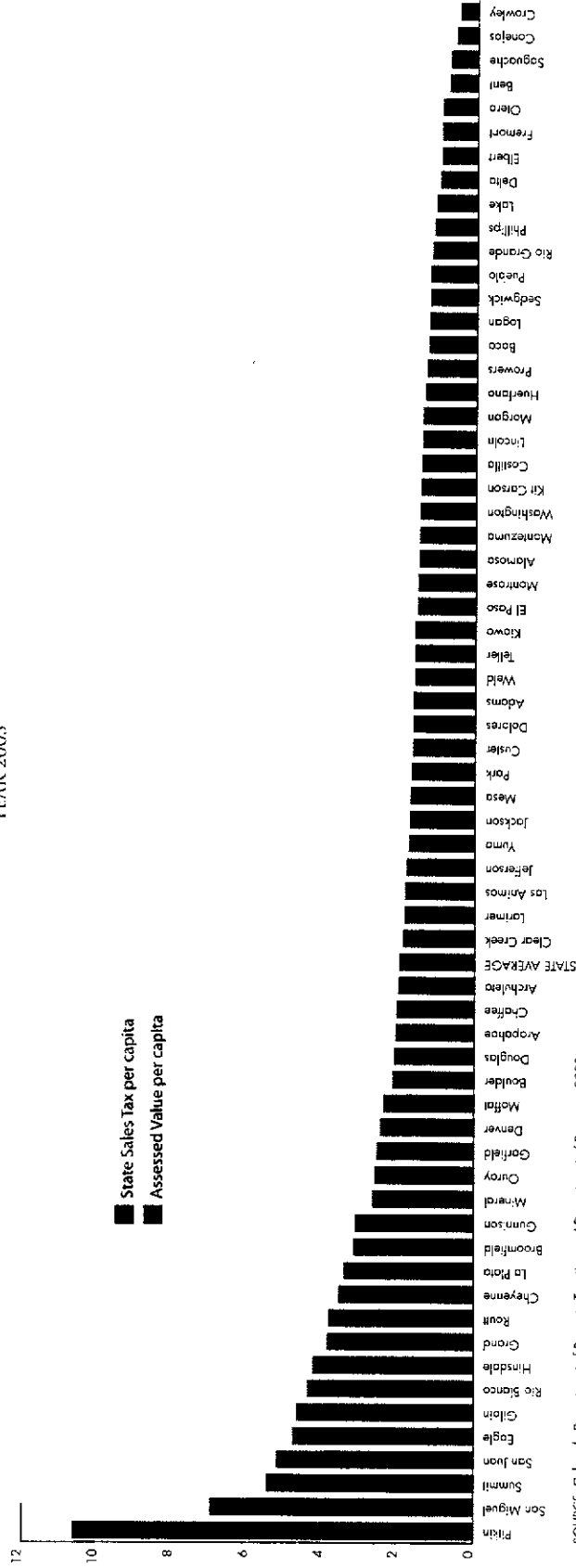
There are ways to lessen this winner-take-all practice. Several local governments have entered into intergovernmental agreements for revenue sharing. This arrangement usually has been between a county and municipalities within its boundaries involving county sales taxes generated within municipalities. Recently, some municipalities have implemented sales tax revenue sharing through intergovernmental agreements on revenues generated within specific areas. These agreements have attempted to mitigate

sales tax base competition. If this practice were encouraged, more efficient land use patterns could emerge, reducing subsequent infrastructure costs, and perhaps beginning to mitigate some of the resource disparities.

The Colorado General Assembly and local governments should consider implementing the following recommendations:

- Share sales taxes regionally among local governments in order to mitigate resource disparities;
- Dedicate a portion of state funds for general revenue sharing to local governments;
- Expand regional cooperation to lessen the tax base competition between local jurisdictions.

COUNTY ASSESSED VALUE AND SALES TAX BASE:
INDEX BY STATE AVERAGE
YEAR 2003



SOURCE: Colorado Department of Property Taxation and Department of Revenue, 2003.

Concentrating solely on tax levels instead of returns on public investment takes the focus off government performance.

DEVELOPMENT OF PUBLIC INVESTMENT AND COST AVOIDANCE STRATEGIES

In recent years there has been significant publicity about cuts in state programs due to the recession. Many of the cuts have adversely affected those who are most vulnerable. Additionally, from a public investment point of view, many of these expenditure cuts have come from areas of the budget where investing now results in long-term public benefits and avoids more substantial spending in the long run.

Many of the cuts have been in programs that encourage individuals to become productive members of society. Investments in early childhood care and education, K-12 and higher education pay handsome returns in helping to build the productive workforce sought by business. Expenditures on preventive services, such as immunizations, substance abuse treatment, mental health services, community alternatives to incarceration of juveniles, probation supervision and in-home care for persons with disabilities have long-term fiscal and societal benefits. They also help avoid the substantial future costs to support these individuals later in life through welfare, incarceration or more expensive medical care.

When the economy falters and revenues fall, funding for other programs often takes precedence. For example, during the budget process, state

spending on prisons and matching funds for mandated Medicaid services take priority. Unfortunately, cutting investments in other programs that have a long-term benefit to the state creates even greater future governmental expenses. The connection of current spending to investment and future cost avoidance is not always obvious, but must be considered to provide future benefits that far outweigh the initial expenditure.

There is an increasing tendency to think of all government expenditures simply as costs to be reduced. While there is much to be said for careful scrutiny of all public expenditures, thinking of taxes simply as something to be cut, rather than an investment to be optimized, is not wise public policy. This concentration on costs instead of returns takes the focus off government performance and achieving a return on taxpayer investments. From a policy perspective, it cripples the legislative and public dialogue about how governments or institutions will achieve their objectives. It also dampens the process of linking public resources to public outcomes. *For these reasons, elected officials should strategically identify budget investments that will produce a significant return for tax dollars invested, generate long-term public benefits, or avoid future costs.*



THE ROAD AHEAD

MEETING THE CHALLENGE

We recognize that the recommendations made in this report do not follow the most popular lines of thinking in the state today, but to capitalize on the many advantages to attain a bright future for Colorado, hard decisions must be made and politically difficult actions taken. We also recognize that while the legislature must play a leading role in removing the impediments to a bright future, the business community and the citizenry must also be fully engaged in the process. A strong nonpartisan effort uniting all of the regions of our vast and diverse state will be required to accomplish what must be done. The task is daunting, but Colorado has not become the place we all love by shrinking from a challenge.

The stakes are high. Failure means that our state will be relegated to a place of mediocrity—an unacceptable legacy. While the task will be difficult, the result will benefit generations of Coloradans for years to come. We must take action.

OUR THANKS

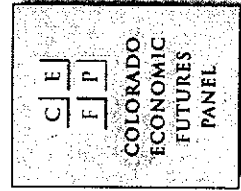
We wish to thank the University of Denver, the Chairman of its Board of Trustees Chancellor Emeritus Daniel L. Ritchie, and Chancellor Robert D. Coombe, for their sponsorship and support of the Panel during the past year. In addition, we are grateful for the financial contributions made by the following foundations:

- *Bonfils-Stanton Foundation*
- *Castle Rock Foundation*
- *The Demer Foundation*
- *Dobbins Foundation*
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- *Joseph Henry Edmondson Foundation*
- *Gates Family Foundation*
- *David and Lucille Packard Foundation*
- *Piton Foundation*
- *Rose Community Foundation*

By contributing to the Panel's efforts, these Colorado charitable foundations recognize the importance of long-term analysis of Colorado's past and present, as well as the need for realistic planning for the future. Colorado is fortunate to have an active and dedicated not-for-profit sector as a full partner in its deliberations on its future.

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Colorado's **FUTURE**

BUILDING A BETTER COLORADO THROUGH CIVIC ENGAGEMENT

Statewide Summary
(updated as of 4/15/10)

A Model for Civic Engagement

"*Building a Better Colorado through Civic Engagement*" is a model which Colorado's Future has tested over the last year to identify and engage civic leaders within their communities in an interactive discussion of public policy challenges with the goal of developing non-partisan solutions for the long-term betterment of our state. Beginning in March of 2009, and with the support of the Colorado Health Foundation and the Institute On the Common Good at Regis University, Colorado's Future tested this Civic Engagement model in several diverse communities across the state.

The Civic Engagement model employed a 4-step process to identify civic leaders within each community to invite to participate in the Civic Engagement Meeting. The identified civic leaders were selected by their peers based on their demonstrated commitment to the community and their recognized demonstration of the following characteristics:

- Being trusted and respected in the community.
- Demonstrating a commitment to working with others to solve problems.
- Demonstrating a commitment to giving back to their community.
- Being well-known in the community.
- Demonstrating a willingness to roll up their sleeves and make positive change happen within the community.
- Collectively, the group represented much of the diversity of the community in terms of age, gender, ethnicity and profession.

Through these Civic Engagement meetings, over 1000 key civic leaders were assembled to answer the following questions:

- Is it possible to identify and engage a diverse group of civic leaders in an interactive dialogue about a complex public policy challenge?
- Will those civic leaders be able to agree on the nature of the problem AND be able to achieve significant agreement on a meaningful solution?
- Will the solution crafted by civic leaders within one community look the same as the solution crafted by civic leaders in other communities?
- Will those civic leaders be concerned enough about the problem and enthused enough about their solution to commit personal effort to securing the necessary support from the broader voting electorate?

During the three hour event, participants engaged in small group discussions and contributed to the large group discussion with the aid of electronic keypad polling devices. The agenda consisted of three main parts: 1) Review of the arguments both FOR and AGAINST ballot and constitutional reform 2) Review, discussion, creation, and voting on over 40 options for improving our initiative and constitutional processes; and 3) Discussion of a strategy for securing passage of any consensus recommendation.

The Issue: Ballot Reform and Constitutional Review

These Civic Engagement meetings were convened around the issue of ballot reform and constitutional review. Over the past 25 years, Colorado has experienced a surge in the number of initiated ballot measures. In the last 17 years, the constitution has been amended 35 times, adding detailed and sometimes conflicting budget provisions with far-reaching unintended consequences. While most Coloradans support citizen initiatives, the lenient process and the ease at which the constitution may be amended has made some ask whether it is time to 1) change the process by which citizens may initiate ballot measures; and 2) update the state constitution in order to mitigate the excessive detail that has resulted in a number of confusing conflicts.

Unprecedented Results

Despite the diversity of the assembled community groups which represented a broad array of professional disciplines, civic interests, and political viewpoints, there was a shared sense that, while it is important for Colorado to retain its citizen initiative process, the ballot process should be reformed to make it more difficult to amend the state's constitution. Through interactive

3-hour discussions, the three groups of civic leaders considered over 40 different options concerning the citizen initiative process and the process of constitutional review.

The participants were given complete control over the direction of the discussion, based on their opinion of the issue of ballot reform and the options which they most supported for addressing that issue. Participants were also invited to suggest their own options for consideration, and these were presented to the broader group to be voted on. While the basic presentation of options was the same, there were adjustments and additions made to that presentation to reflect the lessons learned from each preceding Civic Engagement Meeting.

In the end, the participants were able to develop a strong agreement on a series of meaningful reforms to improve the ballot process.

The following recommendations secured at least 75% support at the Civic Engagement Meetings:

1. Ballot language should be clear and concise (readable at an 8th grade level).
2. Make the financial disclosure requirements for ballot initiative campaigns just as strict as the requirements for candidate campaigns.
3. Require petitioners to collect signatures from various locations around the state.
4. Require more signatures for constitutional amendments than statutory amendments.
5. Require that constitutional amendments secure a super-majority of votes while continuing to allow statutory amendments to be adopted with a simple majority, but allow anything that's ALREADY in the constitution to be amended OUT with a simple majority vote.
6. Establish a Constitutional Review Commission that meets periodically to review the constitution and recommend to voters changes to correct conflicting provisions.

After identifying these shared recommendations, the assembled groups of civic leaders were asked whether or not they would personally support this group of consensus recommendations if the ideas were presented as one measure at the ballot box. Over 90% of the participants indicated that they WOULD vote in support of these recommendations.

A Strategy for Implementation

Colorado's Future recognizes that securing agreement on a recommendation for ballot reform is only HALF the solution; the other half of the solution involves securing support of the voters at the ballot box to implement the recommendation. We

believe that the answer to securing such support lies not in trying to "educate" voters about these complex issues using 30-second sound bytes, but rather by having people whom they know and trust within their own community make an appeal to them for support.

The "Building a Better Colorado" model proposes to leverage the credibility of the civic leaders within their own communities to secure this support amongst the broader voting public through an individual outreach effort coupled with a broader community-based message from those same civic leaders. As part of this strategy, participating civic leaders were asked how many people they would personally be willing to ask to vote for this recommendation if it appeared on the ballot. On average, each participant indicated a willingness to ask 13 others within their circle of influence to vote in support of these ideas.

We believe that by being very deliberate in identifying the civic leaders within each community, and then engaging those civic leaders in a constructive dialogue which is motivated by a shared desire to build a better statewide community (rather than political agendas or organizational ideologies), and giving them control of determining both the problem and the solution, we can develop an environment for building collaborative solutions. Further, we believe that, through this engaging process, civic leaders will be collectively concerned about the problem (which they agreed to) and enthused enough about the solution (which they created), to do what is necessary to secure broader support within their own communities to implement these solutions.

Next Steps

Based on the success of these Civic Engagement meetings, Colorado's Future will request the Colorado General Assembly to pass legislation to forward these citizen recommendations to the ballot to be voted on in the fall of 2010.

The results from all meetings will be available at www.coloradosfuture.org. Colorado's Future will maintain contact with all of the civic leaders who have participated in this process to keep them apprised of the progress of this project. Participating civic leaders are encouraged to sign up on the website and observe the progress of the other communities, and utilize the website's networking capability to identify their own individual contacts for additional outreach.

The summary results of the three beta test Civic Engagement Meetings are pasted below.

SUMMARY TABULATION OF CIVIC ENGAGEMENT MEETINGS

COMMUNITY	Grand Junction	Lakewood	Pueblo	Greeley	Granby ¹	Steamboat Springs	Colorado Springs	Boulder ²	Denver	Adams County	NE Plains	Highlands Ranch	Average / Total
(All figures are in percentages unless indicated otherwise.)													
(Areas where at least 75% agreement was achieved are indicated in GREEN within the "Average" column on the right.)													
Participant Demographics													
Attendance (#)	164	131	107	130	50	129	128	79	100	27	41	70	96 / 1156
How long have you lived in the community? (years)	24	22	25	25	n/a ¹	18	21	19	22	23	28	13	22
What is your age range? (#)	54	56	56	56	46	53	51	57	53	52	49	55	53
What is your political affiliation?													
• Republican	55	39	38	44	37	46	55	11	19	42	46	61	41
• Democrat	31	44	44	38	33	46	29	70	73	46	31	16	42
• Unaffiliated	12	18	17	17	29	31	14	15	8	12	23	20	18
What is your organizational affiliation?	n/a ³												
• Agriculture		0	4	8	0	8	0	0	3	0	11	0	3
• Business		37	39	29	41	38	48	21	24	25	16	56	34
• Healthcare		12	11	5	0	5	8	0	10	4	5	4	6
• Education		9	13	16	0	9	9	0	12	25	18	16	12
• Government		12	16	17	25	13	8	0	11	29	26	11	15
• Non-Profit		23	13	19	14	22	27	28	21	13	18	7	19

¹ The Granby data was corrupted due to a computer error; the results reflect the notes taken by staff.

² The Boulder data was corrupted due to a computer error; the results reflect the notes taken by staff.

³ We did not ask the Grand Junction participants about their "organizational affiliation".

COMMUNITY	Grand Junction	Lakewood	Pueblo	Greeley	Granby ¹	Steamboat Springs	Colorado Springs	Boulder ²	Denver	Adams County	NE Plains	Highlands Ranch	Average / Total
• Other		6	6	7	14	5	1	0	13	4	5	6	6
Identification of the Problem													
There is a problem with the current ballot process.	88	91	84	76	79	80	73	80	80	88	68	68	80
We should retain, but amend, the citizen initiative process in Colorado.	73	75	88	84	86	87	82	88	78	71	73	87	81
Additional Review of Proposed Initiatives													
We should extend the initiative timeframe to allow time for the legislature to host public hearings on proposed initiatives so that the public and the initiative proponents could hear arguments both FOR and AGAINST the proposed initiatives?	65	76	50	74	n/a ¹	57	64	51	74	78	56	64	64
Signature Gathering Requirements for Initiatives													
The number of signatures required to place an initiative on the ballot should be INCREASED.	91	92	85	90	92	86	89	78	68	100	56	92	85
There should be more signatures required for constitutional amendments than statutory amendments.	n/a ⁴	n/a ⁵	83	85	71	88	79	85	86	88	83	68	82
REQUIRE that some signatures be gathered from different locations, AND we should LIMIT how many can come from any one area.	67	57	71	67	80	76	n/a ⁶						70
There should be a limit on how many signatures can come from any one area.	n/a ⁵						50 ⁶	86	56	88	80	71	72

⁴ In Grand Junction, we asked if we should INCREASE the number of signatures for constitutional initiatives while at the same time REDUCING the number of signatures for statutory initiatives. While 61% supported this approach, there MAY have been more support if we had simply asked if we should require more signatures for constitutional amendments than statutory amendments.

⁵ In Lakewood, we forced the respondents to CHOOSE between "increasing" the number of signatures (60% support) and "INCREASING the number of signatures for constitutional initiatives and DECREASING the number for statutory initiatives (32% support). There MAY have been more support if we had simply asked if we should require more signatures for constitutional amendments than statutory amendments.

⁶ Prior to Colorado Springs, we packaged the question of limiting the number of sigs with the question of geographic distribution; in Colorado Springs and thereafter, we began to break out the question of limiting the % of signatures coming from any one area.

COMMUNITY	Grand Junction	Lakewood	Pueblo	Greeley	Granby	Steamboat Springs	Colorado Springs	Boulder ²	Denver	Adams County	NE Plains	Highlands Ranch	Average / Total
We should require petitioners to collect signatures from various locations around the state.	91	90	93	94	94	98	79	78	82	100	98	76	89
Require that initiative signatures be gathered from ALL political districts across the state.		80	79	64	76	79	67	63	75	58	70	71	71
Require that some signatures be gathered in either:		⁸	⁹										
<ul style="list-style-type: none"> • ALL 7 Congressional Districts, or • ALL 35 State Senate Districts. 	66 ⁷	80	36	38	26	34	36	34	41	35	32	53	43
		51	43	26	50	45	31	29	34	23	38	18	35
Statutory vs. Constitutional Measures													
We should encourage initiative proponents to pursue STATUTORY measures rather than CONSTITUTIONAL measures.	89	88	86	83	90	90	81	82	80	92	90	72	85
Prohibit the legislature from amending approved statutory initiatives for a period of time without 2/3rds support.	62	55	67	66	53	57	53	46	52	58	64	48	57
How long should the legislature be prohibited from amending statutory initiatives without 2/3 support? (1, 3, 5 or more yrs)	n/a ¹⁰	n/a ⁷	3	3	3	3	2	3	n/a ¹¹				3
Require that any constitutional amendment must be passed in two consecutive elections.	14	30	10	22	n/a ¹¹	37	23	34	25	16	15	5	21
Require that constitutional amendments secure a super-majority of votes while continuing to allow statutory amendments to be adopted with a simple majority.	91	80	84	79	85	83	90	79	84	92	86	89	85
DEFINE "super-majority" as 2/3rds rather than 60%.	n/a ¹²	n/a ⁶	82	79	87	73	73	62	67	63	73	68	73

⁷ In Grand Junction, we didn't allow participants to choose between requiring signatures to be gathered in "ALL" or "A MAJORITY" of either the Congressional Districts or State Senate Districts. While 66% supported requiring signatures to be gathered from "all or a majority" of State Senate Districts, that support would likely have been higher if we'd limited the scope of this option to ALL Districts.

⁸ In Lakewood, we allowed participants to indicate their support for each geographic option rather than forcing them to CHOOSE between the various options. There was 80% support for requiring signatures in ALL 7 Congressional Districts, and 51% support for requiring signatures in ALL 35 State Senate Districts.

⁹ In Pueblo, and in each meeting thereafter, we asked participants to select BETWEEN the options of: A) a MAJORITY of the 7 Cong Districts, B) ALL of the 7 Cong Districts, C) a MAJORITY of the 35 State Senate Districts, or D) ALL of the 35 State Senate Districts.

¹⁰ We did not ask the participants in Grand Jct and Lakewood how long the legislature should be prohibited from amending a citizen-initiated statutory amendment.

¹¹ We did not ask the NE & SE Denver groups how long the legislature should be restricted from tampering with citizen-initiated statutes.

COMMUNITY	Grand Junction	Lakewood	Pueblo	Greeley	Granby ¹	Steamboat Springs	Colorado Springs	Boulder ²	Denver	Adams County	NE Plains	Highlands Ranch	Average / Total
Allow anything that's ALREADY in the constitution to be amended OUT with a simple majority vote.	78	75	68	64	n/a	75	73	79	69	71	63	62	71
Voter Education													
Make the financial disclosure requirements for ballot initiative campaigns just as strict as the requirements for candidate campaigns.	99	98	91	94	98	99	94	94	97	96	93	86	95
Ballot language should be clear and concise (readable at an 8th grade level).	90	97	89	82	91	89	80	88	75	100	n/a ¹³	100	89
Repeated Ballot Measures													
If an initiative measure is rejected by voters, then an identical or substantially similar measure should be prohibited from appearing on the ballot for a period of time.	59	74	53	41	41	56	60	44	52	52	51	41	52
Constitutional Review & Overhaul													

¹² We did not ask participants in the Grand Junction and Lakewood to define "super-majority".

¹³ We didn't ask the Eastern Plains participants about "clearer ballot language".

COMMUNITY	Grand Junction	Lakewood	Pueblo	Greeley	Granby ¹	Steamboat Springs	Colorado Springs	Boulder ²	Denver	Adams County	NE Plains	Highlands Ranch	Average / Total
Establish a Constitutional Review Commission (CRC) that meets periodically to review a limited scope of the constitution and recommend to voters changes to correct conflicting provisions.	91	85	84	75	82	89	83	80	83	92	62	70	81
How often should the Constitutional Review Commission meet?	n/a ¹⁴	n/a ⁹	6	7	5	5	7	n/a ²	6	7	8		6
The scope of the CRC should be limited.			53	54	42	36	37	76	59	54	79	39	53
The members of the CRC should be													
<ul style="list-style-type: none"> • appointed by elected leaders, or • elected within communities, or • a combination of both. 			27 73 n/a ¹⁵	13 39 28	n/a ¹ n/a ¹ 55	11 28 61	10 24 54	n/a ²	10 22 59	7 15 48	14 23 57	11 34 41	13 32 50
Require political balance among the members, regardless of whether they are appointed or elected.			81	82	77	75	82	n/a ²	79	68	50	78	75
Recommendations of the CRC should be													
<ul style="list-style-type: none"> • placed directly on the ballot, • treated as citizens initiatives with required sigs and vote, • referred to the legislature to approve or not for the ballot. 													
Convene a Constitutional Convention to overhaul all or part of the constitution.	n/a ¹⁶	n/a ¹¹	n/a ¹¹	n/a ¹¹	48 8 44	47 25 39	40 18 41	n/a ²	47 25 28	38 19 43		27 40 23	41 23 36
Amend the constitution to allow a Constitutional Convention to be limited in scope or by topic.	26	45	27	35	48	60	35	n/a ²	45	40	39	22	38
							38 ¹⁷	n/a ²	66	61	44	26	47
<u>Civic Leader Recommendation</u>													

¹⁴ We did not ask the Grand Junction and Lakewood participants any additional questions regarding the details of a Constitutional Review Commission.

¹⁵ We did not ask the Pueblo participants if the CRC should be a COMBINATION of both appointed and elected members.

¹⁶ We did not ask the participants in the GJ, Lakewood, Pueblo or Greeley meetings how the CRC recommendations should be handled.

¹⁷ In Colorado Springs, we began to ask participants about their views on amending the constitution to allow for a Constitutional Convention to be limited in scope.

COMMUNITY	Grand Junction	Lakewood	Pueblo	Greeley	Granby ¹	Steamboat Springs	Colorado Springs	Boulder ²	Denver	Adams County	NE Plains	Highlands Ranch	Average / Total
Would you support a ballot measure which encompassed the strongest points of agreement from this meeting?	93	89	91	82	95	95	92	87	93	96	92	97	92
Statewide Summary Recommendation													
<ul style="list-style-type: none"> Require that constitutional amendments secure a super-majority of votes while continuing to allow statutory amendments to be adopted with a simple majority, but allow anything that's ALREADY in the constitution to be amended OUT with a simple majority vote. Establish a Constitutional Review Commission that meets periodically to review the constitution and recommend to voters changes to correct conflicting provisions. Make the financial disclosure requirements for ballot initiative campaigns just as strict as the requirements for candidate campaigns. Ballot language should be clear and concise (readable at an 8th grade level). Require petitioners to collect signatures from various locations around the state. 	93	97	95	83	95	98	n/a ¹⁸						
How many people would you personally be willing to ask to support this recommendation? (#)	13	13	14	11	14	13	12	14	15	12	15	11	13

¹⁸ Beginning in Colorado Springs, we no longer asked for the level of support for the "Statewide Consensus Recommendation".