

DATE FILED: January 26, 2015

<p>Colorado Supreme Court 2 East 14th Avenue, Denver CO 80203</p> <hr/> <p>Original Proceeding Pursuant to Colo. Rev. Stat. 1-40-107(2) Appeal from the Ballot Title Board</p> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2015-2016 #5</p> <hr/> <p>Petitioners:</p> <p>Natalie Menten and Mike Spalding</p> <p>v.</p> <p>Respondent:</p> <p>Ballot Title Setting Board</p> <hr/> <p>Natalie Menten 1755 S. Carr St. Lakewood CO 80232 nmlakewood@gmail.com</p> <p>Mike Spalding 18 Buckthorn Drive Littleton CO 80127 mspalding@aol.com</p> <p>Petitioners</p> <hr/> <p>PETITIONERS' REPLY BRIEF</p>	<p>FILED IN THE SUPREME COURT.</p> <p>JAN 26 2015</p> <p>OF THE STATE OF COLORADO Christopher T. Ryan, Clerk</p> <p>COURT USE ONLY</p> <hr/> <p>Case No. 2014 SA 379</p>
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This brief contains 1,530 words in eight pages. The standard for review is a new review.

The Board's Opening Brief is astounding. Their brief in our prior petition, #76, agreed with us that our recall petition text could apply to any official, elected or appointed. The single subject was recall of officers. Our revised petition here is for recall of elective officers only, to conform with this court's #76 ruling. Any petition may define its terms, such as “elective,” (s. 3 (2)) and say when that term takes effect.

When #5 was heard by the Board, it first ruled including members of the state “judicial department” was now a second subject. That was their sole stated reason to deny a ballot title. No other reason was given at the rehearing. The Board inferred from the #76 opinion that including state judges was a secret second subject, though that opinion said clearly that recall of appointed officers was “the” second subject.

The Board brief unveiled a different objection to text #5. It says the text affects Article VI, section 26, and Denver's city charter. This ruse is called “hide the ball” by “sandbagging” petitioners. Petitioners warned against that in their opening brief. The #76 opinion said nothing about Denver's charter, section 26 of Article VI, or Denver county court judges. The Board's first brief does not mention the text's application to state court judges. The court would have to become an activist opponent of text #5 to invalidate it based on arguments not raised by the Board. Invention of a reason not

stated in this case would be improper as well as obviously self-serving. This court should sit as justices, not as advocates, and limit itself to ruling on reasons presented.

The Board previously agreed judicial recall is included in Article XXI; it cannot now change its mind. Further, petitioners have a right to add any direct object to the text. The court opinion accepted that coverage of any elective officer was a single subject.

On the merits of the Board's freshly-coined objection, petitioners repeat their point that Colorado does not have a single direct object rule or single application rule. The subject is stated in the title of the text, unchanged from Article XXI's title for the past 102 years--"RECALL FROM OFFICE."

Article XXI would be repealed and re-enacted. All changes fit within that title and that single subject. The Board position is that a uniform application of recall laws to all elective offices is impossible. It here wants to single out the (dozen?) Denver county court judges and require a different rule than for thousands of other state and local legislative, executive, and judicial officers. Petitioners' brief warned against that, too.

Section 26 of Article VI says other provisions in that article VI do not apply to Denver county court judges. It does not say Article XXI does not apply. When certain

exceptions are listed, that list must be interpreted as inclusive and conclusive. Petitioners and the Board have already agreed Article XXI applies to judges. Clarifying that first selection is made by the mayor, not the governor, does not contradict Article XXI.

Election of judges was provided in the 1876 constitution. See Schedule sections 5, 13, and 14 . Recall was provided and implemented in 1912; see the Marians case from 1917 cited in our opening brief. The 1966 judicial amendment did not repeal the application of Article XXI to judges. Even if it had, petitioners have the right to propose a comprehensive reform on the single subject of recall from office. This court also so ruled in its #76 opinion stating recall of any elective officers is a single subject.

Claiming each change to the application of the recall process is a separate subject means a law cannot have general application or be uniform. That contradicts the legal principle stated above the U.S. supreme court pillars, “Equal Justice Under Law.” That engraving has no footnote saying “except for Denver Colorado county court judges.”

On page 3, the Board says changing the recall process is one subject and extending “the existing right to recall” is a second subject. That is a violation of 20 years of case law on the single subject rule. Anything related to recall is one subject. That is the “connection” that prevents text #5 from containing “incongruous” second subjects.

Petitioners inserted the second sentence of 3 (2) in addressing the #76 opinion that recall cannot apply to appointed officers. This court expressly said recall of all elective officers was one subject, so petitioners made it clear when judicial officers are eligible for recall—only after their election. The Board now says our compliance with the #76 opinion is a second subject! We also note here Denver county court judges are covered by retention elections and Article XXI.

On page 6, the Board says this court should hunt for “a hidden purpose under a broad theme.” The text of #5 says in its first sentence it covers local judicial officers. It says “the purpose... is to increase public accountability,” which entails expansion of recall coverage. How could this court's hypothetical voter be surprised, particularly when local judicial officers are also included in the proposed ballot title? The Board concedes on page 7, “If the unstated theme is consistent with the general purpose, the single subject requirement will be met.” Here, the theme is expressly stated in the first two sentences as the purpose of the text.

On page 7, the Board refers to recall of state officials in Article XXI. It ignores section 4, which says in its fifth paragraph, “The recall may also be exercised by the registered electors of each...city and county....with reference to the elective officers

thereof...” (emphasis added). That includes Denver, which became a home rule city and county in 1902, ten years earlier, by the immediately-preceding Article XX.

The state may reduce the area of home rule authority by subsequent amendments to the constitution or by legislative acts. Denver v. Sweet, 138 Colo. 41, 2329 P.2d 441 (1958). Our text #5 is such an amendment. So was Article XXI. A home rule city has no preemptive rights. Century Elec. v. Stone, 193 Colo. 181, 564 P. 2d 953 (1977). Note text #5's declaration, “This article also applies in all home rule jurisdictions as a matter of statewide concern” and its later provision “...any local recall laws are prohibited.” That was in the text of #76 and not objected to by the Board, which agreed unanimously that #76 was a single subject. A constitutional provision cannot be changed by home rule cities. Denver v. Tihen, 77 Colo. 212, 235 P. 777 (1925). An ordinance that conflicts with state statute on a matter of mixed concern is invalid. Denver v. Qwest, 18 P.3d 748 (Colo. 2001). Home rule cities may not deny substantive rights of statewide citizens. Hardamon v. Municipal Court, 178 Colo. 271, 497 P.2d 1000 (1972). A city may not allow recalled officer to succeed himself. Constitutional limits on judicial review of grounds for recall are incorporated in the city charter. Bernzen v. Boulder, 186 Colo. 81, 525 P.2d 416 (1974). A residency requirement in the charter is unconstitutional. Bird v. Colorado Springs, 181 Colo. 141, 507 P.2d 1099 (1973). Statutes limiting photo radar

and red light cameras prevail over local law. Commerce City v. State, 40 P.3d 1273 (Colo. 2002). DUI statute makes subject a matter of statewide concern and leaves nothing for city to regulate. Canon City v. Morris, 137 Colo. 169, 323 P.2d 614 (1958).

In summary, we have a right to petition government, guaranteed by the First Amendment and state constitution and statutes. The only limit on that substantive fundamental right is that the petition contain a single subject, broadly defined, which is listed in the title. The title we proposed in our opening brief meets that Article V, section 1 (5.5) requirement. The subject may cover both state and local elective officers of all branches of government—legislative, executive, and judicial. A petition may expand coverage of its single subject to other direct objects. A petition may achieve uniformity. A petition may change existing law; that is to be expected. A petition also may clarify existing law when justices and lawyers reverse themselves on what the law is now. No court may block a petition because it does not like its contents or finds the text potentially annoying to its colleagues. “Recall from office” is a single subject, and will be forever, no matter how much government decision makers and petition censors fear it. The text plainly states it “shall supersede any conflicting state or local constitutional, statutory, charter, ordinance, or other law, prior opinion, rule, regulation, or legal provision.” A constitutional amendment normally does that, but our text makes that effect explicit.

These principles governing single subject cases for 20 years should be upheld here.

PRAYER FOR RELIEF

We request the text be found a single subject, that the ballot title be set by this court as suggested in our opening brief, and that the six-month period to collect signatures begin only when the secretary of state approves in writing the specific petition format for this measure that is later submitted by petitioners at a time of their choosing.

Respectfully submitted,




Mike Spalding

Natalie Menten

CERTIFICATE OF SERVICE

I hereby certify on January 26 , 2015, I mailed, emailed, and/or hand delivered a copy of this PETITIONERS' REPLY BRIEF, first-class postage paid, to:

Leeann Morrill, first assistant attorney general
1300 Broadway, sixth floor
Denver CO 80203



Natalie Menten

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

S. WARD
9:13 A.M.

RECEIVED

Article XXI of the Colorado Constitution is repealed and re-enacted as follows:

DATE FILED: January 8, 2016 7:06 PM

Article XXI. RECALL FROM OFFICE.

Colorado Secretary of State

Section 1. Eligibility. Elective officers in any state or local legislative, executive, or judicial office are eligible for recall. The purpose of this article is to increase public accountability of public officers.

Section 2. Procedures. (1) Any four registered electors in the recall area may file at any time signed requests to recall eligible officers. Legislative, council, court, and other local election districts shall be the recall area for their officers. Statewide recalls shall be held by the secretary of state and local recalls by the election office of any county, or city and county, in the recall area, except the governor shall select another office or court in two days when an election or judicial officer is named for recall.

(2) Election offices shall deliver a sample petition section within two days. Each black ink section shall contain 100 entry lines, 20 per 8 1/2" by 14" page in portrait layout; the affidavit required in 2006 for state initiatives; and the question, "Shall (names of officers) be recalled as (titles and government)?" No government agent shall detain, stop, cite, or arrest petition circulators or signers for, while, or related to peaceably petitioning, but petition-based perjury, forgery, and other felony frauds shall be prosecuted.

(3) Statewide petition entries shall be first filed within 180 days of sample section delivery, and local entries within 90 days. One 30-day extension to file added entries signed at any time shall start when a first report of invalidity is issued by the later of the election office or court. Added entries shall be reviewed similarly.

(4) The required number of valid petition entries shall be the lesser of 5% of active registered electors in the recall area or 100,000 such entries. Signers shall be registered electors in the recall area. Entry lines shall require only signature, printed name, residential address, and city or town. No error, use, or lack of minor details like middle name, common nickname, initials, street type or direction, apartment, or postal code shall void entries. No sample section or affidavit error shall void entries. Entries shall be reviewed individually, with no random or statistical sampling or machine reading. Varied entries with a signature, readable first and last name and street address, and attached affidavit with or without errors shall be presumed valid until the officer disproves validity by clear and convincing evidence in a court review.

(5) Within 15 days of filings, the election office shall count, review, itemize, and report entries for validity. Within five days of the report, only recall filers and the officer may each protest without fee to the supreme court for its new review of disputed entries. A report of that validity review shall issue within 30 days of the protest filing. Only recall filers prevailing in a protest shall receive attorney fees and costs.

(6) Local elections on eligible officers shall occur on a Tuesday within 60 days after final validation, and statewide elections on the first November election date at least 60 days after. Ballots shall repeat the question for each officer, list "Yes" and "No" choices, and list one website from each side. Death, resignation, or announced retirement shall stop recalls but not pending successor petitions or elections.

(7) Ballots shall then list eligible successors and one website from each. The officer is ineligible. The required number of valid successor petition entries shall be the lesser of 0.5% of active registered electors in the recall area or 10,000 such entries. Entries shall be first filed by 90 days before the election. Successor entry validation and extension time shall be 20% of that time for recall entries. Otherwise, relevant petition procedures in section 2 (2) to section 2 (5) shall apply to successor petitions.

(8) Recalled officers shall lose their offices at once. If no successor be elected, local successors shall be elected similarly within 120 days, and statewide successors the next November. Runoff elections are



prohibited. Interim replacement of governor and mayors only shall occur. Successors are ineligible for a recall election for that office for two years.

Section 3. Enforcement. (1) Except by good faith mistake, no person shall sign a petition more than once or if ineligible. Any adult citizen may circulate any petition. To reduce retaliation and coercion, circulator payments and recall donations shall never be identified, reported, or limited. Other campaign costs and all petitions shall be public records. Except to provide public records, no one shall directly or indirectly give or receive government funds, labor, or aid in any recall or successor campaign or to repay its costs. Election dates also include the first Tuesday in November of odd-numbered years.

(2) "Elective" means in an office subject to regular, special, or retention elections, even if term limited. Judicial officers shall be eligible for recall after their election. This article also applies in all home rule jurisdictions as a matter of statewide concern. Recalled officers and those who resign or announce retirement during their recall process shall not be any officer for the next five years. Officers who defeat a recall election are ineligible for a recall election for that office for four years. A recall election occurs on its last election date. Up to five officers in one recall area may be listed on one recall petition, but they shall be voted on separately. The secretary of state website shall always list by name, title, and government all officers eligible for recall, and all persons ineligible for recall until the election date on that website.

(3) To enforce this article unrelated to specific petition validity, any adult citizen may file a court case in any district court, and the case shall be decided within 30 days. Direct appeals shall be filed within 10 days to the supreme court and shall be decided within 60 days. Only successful plaintiffs enforcing this article shall be awarded their costs, attorney fees, and damages, and only against governments and officers. Added recall requirements or any local recall laws are prohibited. This article shall be self-executing, severable, and effective upon passage. It shall be interpreted strictly in favor of this fundamental right to petition for recall and succession, and against governments and officers. It shall supersede any conflicting state or local constitutional, statutory, charter, ordinance, or other law, prior opinion, rule, regulation, or legal provision.

Ballot Title Setting Board

Proposed Initiative 2015-2016 #5¹

Hearing December 3, 2014:

Title setting denied on the basis that the measure does not constitute a single subject.

Hearing adjourned 1:38 p.m.

¹Unofficially captioned “Recall of Officers” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.



December 9, 2014

To: Ballot Title Setting Board

RECEIVED S W A R D
DEC 09 2014 11:22 A.M.

Colorado Secretary of State

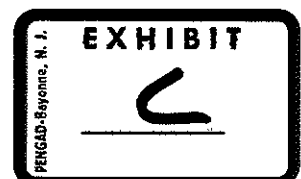
We are requesting a re-hearing for Proposed Ballot Initiative #5 2015-2016.

We believe we were erroneously denied a title setting and that our initiative constitutes a single subject.

Petition Representatives:

Natalie Menten
1755 S. Carr St.
Lakewood, CO 80232

Mike Spalding
18 Buckthorn
Littleton, CO 80127



Ballot Title Setting Board

Proposed Initiative 2015-2016 #5¹

Hearing December 3, 2014:

Title setting denied on the basis that the measure does not constitute a single subject.

Hearing adjourned 1:38 p.m.

Rehearing December 17, 2014:

Motion for Rehearing denied.

Hearing adjourned 1:15 p.m.

¹Unofficially captioned “**Recall of Officers**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

