

FEB 19 2016

SUPREME COURT OF COLORADO
2 East 14th Avenue, Denver CO 80203

OF THE STATE OF COLORADO
Christopher T. Ryan, Clerk

DATE FILED: February 19, 2016

Original Proceeding Pursuant to Colo. Rev. Stat. 1-40-107(2)

Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and Submission Clause
for Proposed Initiative 2015-2016 #73 ("Public Accountability of
Officials")

Petitioner:

PHILLIP HAYES

v.

Respondents:

MIKE SPALDING AND DAVID OTTKE, and

**Title Board: SUZANNE STAIERT; FREDERICK YARGER;
JASON GELENDER**

COURT USE ONLY

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Case No.
2016 SA 48

Respondents

OPENING BRIEF

This brief contains 1266 words in five pages. The standard for review is a new review but with substantial deference to the Title Board's decision.

SINGLE SUBJECT

We have patiently employed the legal process for over two years. Our text reduces the length of Article XXI by over 1,100 words. Every objection made admits it is about the recall process only. It is not about education, water, taxes, roads, guns, land use, fishing, or any other subject. This court and the title board—ten lawyers--have repeatedly denied our constitutional right to petition for two election cycles. Now, the Title Board has again agreed the text is a single subject, as it first did two long years ago. The objector and his lawyer has failed in their burden of proof to overcome the traditional legal deference due the title board.

This court has said a text can be very broad and thorough in scope, so long as all its parts are related or connected to the single subject—recall, as a means of accountability. We aim to strengthen a fundamental constitutional right of the people. We have a right to propose to voters a plan that is effective, not theoretical, and solves real problems discovered when first used against state officials in 2013. It had sat on the shelf for a century with unconstitutional, illegal, biased, vague, contradictory, open-ended, long-winded, and nearly-impossible requirements, at least two of which came before this court prior to the 2013 recall elections.

We again refute objector's misleading claim that the direct object of a recall petition

is the subject of its text. The single subject is the recall process; those to whom it applies are the direct objects of the recall. This is grade school grammar. For example, "We want to register cars and boats." That single subject is registration. Cars and boats are objects of the process. If the bill were amended to add "planes," that would not be another subject. This court agreed with that in prior petitions. A property tax change as a constitutional amendment can apply to all local taxing jurisdictions, for example.

We have a right to offer a different balance on electoral factors. Objector may propose his own petition, but he misuses this process as a soap box to express his political disagreement in the hopes this court sinks into a redrafting session. This is not the proper forum for testing campaign themes against a ballot issue that has not collected one signature because of this virtually infinite judicial review process.

Objector says the question on the recall petition form violates the single subject rule. We have a right to make the petition process efficient and to simplify the task of election offices. If we did not, objector would say in the campaign against our ballot issue that citizens would be beset by four times as many petition entries as necessary! We have a right to anticipate and prevent that obvious campaign criticism.

Objector repeatedly says the text allows four officials in the same government to be

recalled with one petition. NO ONE CAN BE RECALLED BY ANY PETITION, BUT ONLY BY ELECTION. A PETITION ONLY CALLS FOR AN ELECTION.

Objector claims we have a one-person recall petition rule, which we do not, and surely won't have with passage of this text repealing the current Article XXI. He equates a "single direct object rule" with a single subject rule. Single subject applies only to initiative petitions, not recall petitions. Objector wants this court to think there is a single subject rule for the object of a recall. Further, only one name per vote is on the ballot, as Art. XXI provides now.

A petition burden to recall a corrupt council should not be quadrupled because objector gets this court to invent a single direct object rule, in violation of 20 years of single subject case law. Citizens have a right to ease the nearly-impossible recall burdens.

The grounds for appeal list basically two other alleged "subjects." One is using single signatures to start the recall process of up to four elected officials, even though they would be voted on separately. Efficiency is not a second subject to any petition.

The second alleged separate subject is having a consequence when an official is recalled. That was also in all prior versions. To say having a recall process is one subject, and having an effective recall process (that does something) is a second subject, is absurd.

Every measure has a right to have an enforcement section. Here, one enforcement tool is to prevent a revolving door for recalled officials, to prevent being recalled on Tuesday and put back in office Wednesday. Having a recall process and having recall consequences are not two subjects! Having a recalled process apply to both state and local government officials is not two subjects, either. Changing current law is not a separate subject to the process itself. Any petition is done to change the law. Proposing law X and having it replace law Y on the same subject are not two different subjects!

Furthermore, the current ballot title says clearly the penalty will be a time out from elective office for six years. Objector ignores that clause.

BALLOT TITLE WORDING

A state statute says, "Ballot titles shall be brief." They should cite only major features, not every detail. The text applies to "recall of elective officials." Objector wants to defeat the legal requirement of brevity by demanding a reader-alienating gusher of minutiae.

The minor details raised by objector are not main features. A ballot title cannot be brief if it must include everything in the text. Voters will get a Blue Book with the full text,

staff analysis, and arguments on both sides. The text will be printed in all major newspapers. It will be the subject of wide public discussion as a statewide ballot issue, through radio, TV, advertising, websites, fliers, brochures, postcards, etc.

Relating what the signature requirement is now, which varies with voter turnout, in order to describe the difference after repeal would be confusing and lengthy. The required number of signatures will vary in every future election. The cap on the total is an absolute number, not a percentage. Both would have to be listed to please objector. "Active" would have to be defined in the ballot title. We already define "elective."

Voters don't care about how many times someone voluntarily signs a recall petition form. That is another minor detail. It doesn't affect the lives of Victor and Vera Voter. Objector again falsely states on page 5 that officials "can be recalled by means of one petition." That is still untrue, and always will be untrue.

Objector contends a uniform standard for successor petition signatures is a major feature; it is not. It is simply the process for ballot access, and of interest only to candidates. To state current candidate signature requirements in thousands of local districts would be a pointless comparison that annoys the reader of the ballot title in order to create negativity.

Objector deceives this court by saying the text restricts the ability to ensure legality

of petition signatures and circulator actions. The existing Article XXI leaves signature review to private protesters, except for official review for number and legibility of entries. That is the current system for recalls and initiatives, but stated more specifically here for recalls. Officers should not hunt for reasons to reject entries unless and until opponents request a public hearing. The affidavit process is used to create a presumption of validity; see also Article V, section 1 (6).

Objector raises in paragraph e. on page 6 the six-year time out for recalled officials. That is clearly stated in the current ballot title. His objection is negligent.

The last objection is to restating existing law. We agree that clause should be deleted.

The ballot title can be shortened with no loss of meaning. The phrase “payments to recall petition circulators” sounds like the recall committee is paying money to promote the recall of their own circulators! The word “recall” here can be either a verb or an adjective. Also, payments to circulators are spending for a recall campaign, which makes its inclusion redundant.

We propose the ballot title be shortened to read:

Shall there be an amendment to the Colorado constitution concerning recall of elective officials, which specifies state and local recall and successor election procedures; states recalled officials shall not be any official for six years, and officials who defeat a recall

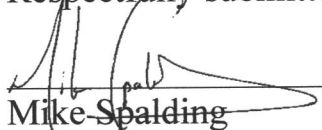
shall not be recalled for four years; and prohibits identifying, reporting, or limiting donations and spending for recall campaigns?

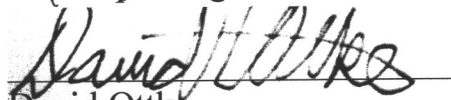
PRAYER FOR RELIEF

The same objector raised his two “single subject” issues previously to this court. Neither claim was found to be a separate subject before, nor are they separate subjects now.

We request the text be found to be a single subject and that the ballot title be shortened as shown here. Please rule within one week of the submission of these opening briefs and cancel any reply briefing. This issue is not complicated and we are running out of time to collect 140,000 signatures by the first week in August. We made this request by certified letter received by the court on February 9, 2016. State law also says, “THE MATTER SHALL BE DISPOSED OF PROMPTLY.” Respondents suggest a two-year delay, or even a one month delay on a revised subject this court has reviewed twice before, does not comply with the letter and spirit of the law.

Respectfully submitted,


Mike Spalding


David Ottke

CERTIFICATE OF SERVICE

I hereby certify on February 15, 2016, I mailed a copy of this OPENING BRIEF...
first-class postage paid, to:

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LeeAnn Morrill
Office of the Attorney General
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Denver CO 80203

A handwritten signature in dark ink, appearing to be 'LM', written over a horizontal line.