

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p> <hr/> <p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p> <hr/> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2015-2016 #73 ("Public Accountability of Officials")</p> <p>Petitioner: Phillip Hayes v. Respondents: Mike Spalding and David Ottke</p> <p>and</p> <p>Title Board: SUZANNE STAIERT; FREDERICK YARGER; and JASON GELENDER</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorney for Petitioner:</p> <p>Mark G. Grueskin, #14621 RECHT KORNFELD, P.C. 1600 Stout Street, Suite 1000 Denver, CO 80202 Phone: 303-573-1900 Facsimile: 303-446-9400 Email: mark@rkclawpc.com</p>	<p>Case No. _____</p>
<p>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2015- 2016 #73 ("PUBLIC ACCOUNTABILITY OF OFFICIALS")</p>	

Phillip Hayes (“Petitioner”), registered elector of the State of Colorado, through undersigned counsel, respectfully petitions this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Initiative 2015-2016 #73 (“Public Accountability of Officials”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative #73

Mike Spalding and David Ottke (hereafter “Proponents”) proposed Initiative 2015-2016 #73 (the “Proposed Initiative”). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, the Proponents submitted final versions of the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board, of which the Secretary or his designee is a member. A Title Board hearing was held on January 20, 2016 to establish the subjects of the Proposed Initiative and set their titles. On January 27, Petitioner filed a Motion for Rehearing, alleging that #73 contained multiple subjects and the titles set were prejudicial, incomplete, and misleading and to reflect the complete intent of the Proponents and the central features of the Proposed Initiative. The rehearing was held on February 3, 2016, at which

time the Title Board granted in part and denied in part the Motion for Rehearing.

B. Jurisdiction

Petitioner is entitled to a review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioner timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1). Additionally, Petitioner timely filed this Petition for Review within five days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of: (1) the draft, amended, and final versions of the initiatives filed by the Proponents; (2) the original ballot titles set for this measure; (3) the Motion for Rehearing filed by the Petitioner; and (4) the rulings on the Motion for Rehearing as reflected by the titles and ballot title and submission clauses set by the Board. Petitioner believes that the Title Board erred in denying certain aspects of the Motion for Rehearing. Consequently, this matter is properly before this Court.

GROUND FOR APPEAL

In violation of C.R.S. §§ 1-40-106, -107, the title set by the Title Board is unfair, misleading, and does not fairly and correctly express the true meaning of the Proposed Initiatives. The following is an advisory list of issues to be addressed in Petitioner's brief:

1. Initiative #73 contains multiple subjects in violation of Colo. Const., art. V, § (1)(5.5), including the subjects of "the manner in which recall elections are triggered and conducted" as well as:
 - a. authorizing recall of multiple (up to four) officials on the same recall petition, thus eliminating the "single subject" element of existing recall petitions – that is, the recall of a single, named elected official;
 - b. authorizing recall of multiple (up to four) officials on the same recall petition within the same recall area and thus allowing for simultaneous recall of officials holding different and entirely unrelated offices;
 - c. changing qualifications for all state and county officials, no what office was held prior to recall and no matter what office is sought after recall, by prohibiting such officials from holding

office within six (6) years after a successful recall or a resignation during a recall election; and

- d. changing current constitutional provisions by eliminating the ability of home rule cities generally, and the city and county of Denver and the city and county of Broomfield specifically, to be sole arbiters of officials' qualifications through their charters and ordinances as provided by the Colorado Constitution.

2. The ballot title set for Initiative #73 was misleading, confusing, and inaccurate, in violation of C.R.S. § 1-40-106, because it:

- a. fails to set forth the changes to the required number of signatures for a sufficient recall petition, both in terms of the percentage of electors required to sign a recall petition and the fact that one petition can support recall of four (4) officials;
- b. fails to state that as many as four (4) elective officials within the “same recall area” can be recalled by means of one petition;
- c. fails to state that the measure significantly changes the formula for the required number of signatures on candidate petitions for potential successors to a recalled official;

- d. fails to state that the measure restricts election officials' ability to ensure legality of petition signatures and circulator actions;
- e. fails to specify changes made to qualifications of all elected officials for six (6) years, as they cannot have resigned from office at any point during the recall process; and
- f. restates existing law as to campaign finance reporting by committees opposing the recall of an elected official.

PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the title set for the Proposed Initiative contains multiple subjects and should be returned to the Proponents or, alternatively, is not fair and accurate and remand the Proposed Initiative to the Title Board with instructions to redraft the title to accurately and fairly represent the text of the Proposed Initiative.

Respectfully submitted this 10th day of February, 2016.

/s/ Mark Grueskin

Mark G. Grueskin, #14621
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ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2015-2016 #73 ("PUBLIC ACCOUNTABILITY OF OFFICIALS")** was sent this day, February 10, 2016, via first class U.S. mail, postage pre-paid to the proponents and to counsel for the Title Board at:

LeeAnn Morrill
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203

Mike Spalding
18 Buckthorn Drive
Littleton, CO 80127

David Ottke
3308 S Hannibal St
Aurora, CO 80013





DATE FILED: February 10, 2016 1:44 PM

STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **WAYNE W. WILLIAMS**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2015-2016 #73 'Public Accountability of Officials'".....

..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 4th day of February, 2016.



Wayne W. Williams

SECRETARY OF STATE

2:55 P.M.

JAN 07 2016

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

Article XXI of the Colorado Constitution shall be repealed and re-enacted as follows: **Colorado Secretary of State**

Article XXI. PUBLIC ACCOUNTABILITY OF OFFICIALS.

Section 1. Accountability. All state and local legislative and executive elective officials shall also be accountable to voters in the manner stated in this article.

Section 2. Recall. (1) Any two electors in the petition area may file at any time signed requests to start the recall of eligible elective officials. Legislative, council, and other local election districts shall be the petition area of their officials. Statewide recalls shall be conducted by the Secretary of State and local recalls by any county election office in the petition area.

(2) Election offices shall deliver a sample recall 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; an affidavit form usable in 2006 for state initiatives; and the question, "Shall (names of officials) be removed as (titles)?" Up to four officials in one petition area may be listed on one recall petition, but shall be voted on separately.

(3) No petition permit, license, badge, bond, registration, training, tax, or fee shall be required of petition filers, signers, entities, or circulators. Using paid circulators shall create no extra legal duty. Any adult citizen may circulate any petition. No one shall knowingly sign a petition more than once or if ineligible. No government agent shall detain, stop, cite, or arrest circulators or signers for, while, or related to peaceably petitioning, but petition-based perjury, forgery, and other felony frauds shall be prosecuted.

(4) Statewide petition entries shall be first filed within 365 days of sample section delivery, and local entries within 90 days. One 30-day extension to file more entries made at any time shall start when a first report of invalidity is issued. Added entries shall be reviewed similarly.

(5) The required number of valid petition entries shall be 5% of active registered electors in the petition area and shall not exceed 100,000. Signers shall be registered electors in the petition 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, date, 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, street address, and attached affidavit with or without errors shall be presumed valid until a foe disproves validity by clear and convincing evidence in a court review.

(6) Within 10 days of filings, the election office shall count, review, itemize, and report entries for validity. Within five days of the report, petition filers and foes 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 20 days of protest filing. Only petition filers prevailing in a protest shall receive attorney fees and costs.

(7) Local recall elections 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 on each official, list "Yes" and "No" choices, and list one website each from the official and petition filers. Death or immediate resignation shall stop recalls but not pending successor petitions or elections.

(8) Ballots shall then list eligible successors and one website from each. The official shall be ineligible. The required number of valid successor petition entries shall be 0.25% of active registered electors in the petition area and shall not exceed 5,000. Successor 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 recall petition procedures shall apply to successor nomination petitions. Recall and successor ballots shall not list political party registration.

(9) Recalled officials shall lose their offices instantly. Runoff elections shall be prohibited. Successors shall be ineligible for recall for two years. Recalled officials and those who resign during a recall process shall not be any official for six years. Officials defeating a recall election are ineligible for recall from that office for four years.

10) A recall occurs on its last election date. Election dates shall include the first Tuesday in November of odd-numbered years. Except to provide public records, no one shall directly or indirectly give or receive government funds, labor, or other aid in any recall or successor campaign or to repay its costs. To reduce retaliation and coercion, donations and spending for a petition campaign and circulator payments shall never be identified, reported, or limited. Opposition donations and spending and all petitions shall be public records. Added recall requirements and any local recall laws shall be prohibited.

Section 3. Enforcement. "Elective" means in an office subject to election, even if term limited. This article shall also apply in all home rule governments as a matter of statewide concern. To enforce this article unrelated to specific petition entry validity, any adult citizen may file a case in any district court, which shall decide it within 30 days. Appeals shall be filed within five days to the Supreme Court and decided within 25 days of appeal filing. Only successful plaintiffs enforcing this article shall be awarded their costs, attorney fees, and damages, and only against governments and officials. This article shall be self-executing, severable, and effective upon passage. It shall be interpreted strictly in favor of this fundamental right to vote and against governments and officials. It shall supersede any conflicting state or local constitutional, statutory, charter, ordinance, or other law, prior opinion, rule, regulation, or wording.

Ballot Title Setting Board

Proposed Initiative 2015-2016 #73¹

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

An amendment to the Colorado constitution concerning recall of elective officials, and, in connection therewith, specifying recall and successor election procedures for state and local elective officials; defining future eligibility for elective office for recalled officials and for recall of officials who have already defeated a recall effort; requiring opposition donations and spending to be public records; and prohibiting identification, reporting, or limiting of donations to recall campaigns and payments to recall petition circulators.

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 recall of elective officials, and, in connection therewith, specifying recall and successor election procedures for state and local elective officials; defining future eligibility for elective office for recalled officials and for recall of officials who have already defeated a recall effort; requiring opposition donations and spending to be public records; and prohibiting identification, reporting, or limiting of donations to recall campaigns and payments to recall petition circulators?

Hearing January 20, 2016:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 11:30 a.m.

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

RECEIVED

JAN 27 2016

S. WARD

3:06 P.M.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD Colorado Secretary of State

Philip Hayes, Objector

vs.

Mike Spaulding and David Ottke, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2015-2016 #73

Philip Hayes, through his legal counsel, Recht Kornfeld P.C., objects to the Title Board's title and ballot title and submission clause set for Initiative 2015-2016 #73 ("Public Accountability of Officials").

On January 20, 2016, the Board set the following ballot title and submission clause:

Shall there be an amendment to the Colorado constitution concerning recall of elective officials, and, in connection therewith, specifying recall and successor election procedures for state and local elective officials; defining future eligibility for elective office for recalled officials and for recall of officials who have already defeated a recall effort; requiring opposition donations and spending to be public records; and prohibiting identification, reporting, or limiting of donations to recall campaigns and payments to recall petition circulators?

ADVISORY GROUNDS FOR RECONSIDERATION

I. #73 comprises multiple subjects in violation of the Colorado Constitution.

The Colorado Supreme Court did not resolve all single subject issues in connection with the measure proposed as Initiative 2013-2014 #76. In fact, it expressly left such matters open for future consideration by this Board. *See In re Titles for Initiative 2013-2014 #76*, 333 P.3d 76, 84 n.2 (Colo. 2014) (Court "need not and do[es] not" decide single subject issues other than recall of non-elected officers, including alleged separate subjects of "elimination of the single subject requirement of recall petitions, and allowance of five different types of officials to be recalled by the same petition"). Thus, the question of whether this initiative comprises a single subject is far from being a settled matter.

The Court held that the collective subject of several listed procedural elements of Initiative #76, *id.* at 81-82, reflected the subject of "the manner in which recall elections are triggered and conducted" which, standing alone, "constitute[s] a single subject." *Id.* at 83. The

Board lacks jurisdiction to set a title for #36 under Colo. Const., art. V, sec. 1(5.5), given the following additional subjects.

- A. The measure allows for recall of multiple (up to four) officials on the same recall petition, thus eliminating the “single subject” element of existing recall petitions – that is, the recall of a single, named elected official. Colo. Const., art. XXI, sec. 1 (“procedure hereunder to recall an elective public officer...”; “a successor of the incumbent sought to be recalled”; “the officer named in said petition”; “the person sought to be recalled”; “a successor to the incumbent”).
- B. The measure allows for recall of multiple (up to four) officials on the same recall petition within the same recall area and thus allows for the simultaneous recall of officials holding different and entirely unrelated offices. *Id.*
- C. The measure changes qualifications for all state and county officials, no matter what the office (“Recalled officials and those who resign during a recall process shall not be *any* official for six years”). This prohibition applies to every elective office in the state, from governor to those judges who are elected and not just retained. *See, e.g.,* Englewood Charter, art. IX, part II, § 68 (authorizing election of city municipal judge for a term of four years). As such, it amends numerous provisions of existing law in a way that would not be readily apparent to voters. *See, e.g.,* Colo. Const., art. IV, §§ 1(2), 4 (qualifications of executive branch officers at the state level); art. V, § 4 (qualifications of state legislators); art. XIV, § 8 (qualifications of county officers). It also applies to officials who, after a successful recall election, are elected or appointed to fill a vacancy, even if to an office that is wholly unrelated to the one in which the recall election occurred and at a different level of government. Changes to the prerequisites to run in all such regularly held elections are unrelated to the “recall elections” that are conducted, and thus included within, the single subject identified by the Supreme Court. #76, *supra*, 333 P.3d at 83. The qualifications of a governmental official to hold office is its own subject. *In re Title for 1999-2000 #104*, 987 P.2d 249, 257 (Colo. 1999).
- D. In combination with the specific office qualifications that have been changed as set forth above, the measure also eliminates the ability of home rule cities generally and the city and county of Denver and the city and country of Broomfield specifically to be the sole arbiters of officials’ qualifications through their charters and ordinances. Colo. Const, art. XX, § 2 (qualifications of officers of city and county of Denver); art. XX, § 6 (qualifications of home rule officers); art. XX, § 11 (qualifications of officers of city and country of Broomfield). These changes violated the single subject requirement. *See In re Proposed Initiative for 1999-2000 No. 29*, 972 P.2d 257, 263-64 (Colo. 1999) (indirect repeal of Denver’s “independent control over the selection” of judges was a separate subject). These changes to this constitutional authority for home rule cities also fall outside of the subject of “recall elections.”

- E. The measure restricts and displaces the time honored power, set out in Colo. Const., art. XX, sec. 6, of home rule municipalities to control all election matters. *See Matter of Title, Ballot Title and Submission Clause, and Summary for 1997-1998 No. 95*, 960 P.2d 1204, 1208-09 (Colo. 1998). For instance, the City and County of Denver provides for run-off elections for recall elections whereas #73 expressly authorizes run-off elections where recall of a city official is at issue. Compare D.R.M.C., § 15-11(d)(2) with #73, proposed art. XXI, § 2(9). In the same fashion, Denver provides for reimbursement to public officials subject to recall to repay legal costs incurred whereas #73 prohibits any government funds given or any repayment of costs in connection with a recall. Compare D.R.M.C., § 15-75 with #73, proposed art. XXI, § 2(9). Also, Denver requires all committees to report contributions and expenditures, D.R.M.C., § 15-35, whereas #73 insulates pro-recall committees from all disclosure requirements. Proposed art. XXI, § 2(9). The displacement of home rule power as to election authority is a second subject.

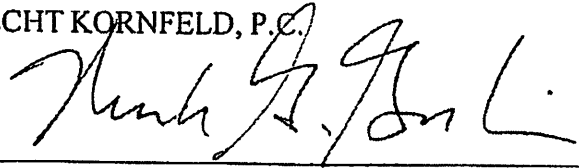
II. Even if the Board had jurisdiction to set a title for #73, the title it set was misleading, confusing, and inaccurate.

- A. The title fails to state that no local recall laws of any sort may be adopted.
- B. The title fails to state that no “[a]dded recall requirements” of any sort may be adopted, whether by statute, ordinance, regulation, or policy.
- C. The title fails to state the measure significantly changes the formula for establishing the required number of signatures for a sufficient recall petition, both in terms of the percentage of electors required to sign a recall petition and the fact that a petition can support recall of four (4) officials, meaning that each official would only have to be the cause for 25% of signers to affix their names to a petition.
- D. The title fails to state the measure significantly changes the formula for establishing the required number of signatures for a sufficient candidate petition.
- E. The title fails to state that as many as four elective officials within the “same recall area” can be recalled by means of one petition.
- F. The title fails to state the measure sets (and lengthens) the period allowed to gather sufficient signatures for a recall petition.
- G. The title fails to state the measure expands the current time periods for elected officers to be immune from recall (four years) or that successors to offices because of recall cannot be recalled for two years.
- H. The title fails to state the measure restricts the ability of election officials to ensure the legality of petition signatures and circulator actions.

- I. The title fails to state that an election official may only strike a signer's completed entry by disproving its validity in court and by clear and convincing evidence.
- J. The title fails to specify the changes made to qualifications of all elected officials (for four years, they cannot have been recalled from that elected office or resigned from office during the recall process).
- K. The title is confusing and inaccurate in stating that #73 "defin[es] future eligibility for elective office... for recall of officials who have already defeated a recall effort." The measure does not address the eligibility of officials who are not recalled by voters for any other office.
- L. The title states what is already in existing campaign finance law, namely that opponents' "donations and spending" must "be public records." That #73 mimics existing law is not a change to current law and thus cannot be a central feature of the measure to be reflected in the title.

RESPECTFULLY SUBMITTED this 27th day of January, 2016.

RECHT KORNFELD, P.C.



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Objector's Address:

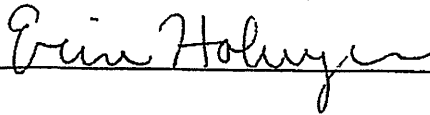
Philip Hayes
5464 South Ward Way
Littleton, CO 80127

CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate cop of the **MOTION FOR REHEARING ON INITIATIVE 2015-2016 #73** was sent this day, January 27, 2016, via first class U.S. mail, postage pre-paid to the proponents at:

Mike Spalding
18 Buckhorn Drive
Littleton, CO 80127

David Ottke
3308 S. Hannibal Street
Aurora, CO 80013



Ballot Title Setting Board

Proposed Initiative 2015-2016 #73¹

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

An amendment to the Colorado constitution concerning recall of elective officials, and, in connection therewith, specifying recall and successor election procedures for state and local elective officials; stating that recalled officials shall not be any official for six years; restricting recall from the same office for an official who has already defeated a recall effort; requiring opposition donations and spending to continue to be public records; and prohibiting identification, reporting, or limitation of donations to recall campaigns and payments to recall petition circulators.

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 recall of elective officials, and, in connection therewith, specifying recall and successor election procedures for state and local elective officials; stating that recalled officials shall not be any official for six years; restricting recall from the same office for an official who has already defeated a recall effort; requiring opposition donations and spending to continue to be public records; and prohibiting identification, reporting, or limitation of donations to recall campaigns and payments to recall petition circulators?

Hearing January 20, 2016:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 11:30 a.m.

Rehearing February 3, 2016:

Motion for Rehearing granted only to the extent that the Board made changes to the titles; denied in all other respects.

Hearing adjourned 10:46 a.m.

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