

ORIGINAL

<p>SUPREME COURT, STATE OF COLORADO</p> <p>Court Address: Colorado State Judicial Building 2 E 14<sup>th</sup> Avenue, Suite 400 Denver, Colorado 80203</p>	<p>FILED IN THE SUPREME COURT</p> <p>JAN 25 2006</p> <p>OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK</p> <p><b>COURT USE ONLY</b></p>
<p>ORIGINAL PROCEEDINGS PURSUANT TO C.R.S. § 1-40-107(2), Appeal from the Title Board</p> <p>IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2005-2006 #55</p>	<p>Case No.: <i>06SA20</i></p>
<p>MANOLO GANZALEZ-ESTAY,</p> <p>Petitioner,</p> <p>and</p> <p>WILLIAM HOBBS, ALLISON EID, and DAN CARTIN,</p> <p>Respondents,</p> <p>and</p> <p>WILLIAM G. HERRON and JANICE M. HERRON,</p> <p>Proponents.</p>	
<p>Attorney: Mark G. Grueskin; Kara Veitch Isaacson Rosenbaum P.C.</p> <p>Address: 633 Seventeenth Street, Suite 2200 Denver, Colorado 80202</p> <p>Phone No.: (303) 292-5656</p> <p>FAX No.: (303) 292-3152</p> <p>E-mail: mgrueskin@ir-law.com; kveitch@ir-law.com</p> <p>Atty. Reg. #: 14621, 32227</p>	
<p><b>PETITION FOR REVIEW</b></p>	

Petitioner Manolo Gonzalez-Estay ("Petitioner"), a registered elector of the State of Colorado, through his counsel, hereby submits this Petition for Review to

appeal the decision of the State Title Board in setting the title for proposed Initiative 2005-2006 #55, which limits the provision of non-emergency services by the State of Colorado and all political subdivisions thereof to persons who are citizens or otherwise lawfully present in the United States.

## STATEMENT OF THE CASE

### A. Procedural History of Initiative #55.

Proposed Initiative 2005-2006 #55 (the "Proposed Initiative") prohibits the State of Colorado, as well as all cities, counties, and political subdivisions thereof, from providing any non-emergency services to persons who are not citizens or otherwise lawfully present in the United States. The Proposed Initiative was proposed by William G. Herron and Janice M. Herron (the "Proponents"). The Proposed Initiative is substantively identical to proposed Initiative 2003-2004 #88.<sup>1</sup>

On November 10, 2005, the Directors of the Offices of Legislative Council and Legislative Legal Services held a hearing to address their concerns about the Proposed Initiative. At the hearing, the questions raised in a memorandum, dated November 7, 2005, and prepared by these offices, were addressed by Mr. Herron.

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<sup>1</sup> The State Title Board set a title for proposed Initiative 2003-2004 #88. Manolo Gonzalez-Estay filed a Petition for Review based solely on the argument that the title "is misleading, does not correctly and fairly express the true meaning of the initiative, does not unambiguously state the principle of the provision to be added to the Constitution, and will lead to voter confusion..." Petition for Review, at 2, dated March 24, 2004, filed in *Castillo v. Hobbs*, case number 05A95. At that time, Mr. Gonzalez-Estay did not challenge the initiative based on the Colorado Constitution Article V, § 1(5.5), which prohibits initiatives from containing multiple subjects.

Thereafter, the Proponents submitted a final version of the Proposed Initiative to the Secretary of State. A Title Board hearing was held on January 4, 2006, at which the Title Board set the title for the Proposed Initiative. On January 11, 2006, Petitioner filed a Motion for Rehearing. The rehearing was held on January 18, 2006, at which the Title Board denied Petitioner's request.

**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, excluding weekends, from the date of the hearing on the Motion for Rehearing. *Id.*, § 1-40-107(2); *Matter of Title, Ballot Title and Submission Clause, and Summary for 1997-1998 #62*, 961 P.2d 1077, 1079 (Colo. 1998). Additionally as required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of: (1) the initiative filed by the Proponents; (2) the title and the submission clause set by the Title Board; (3) the Motion for Rehearing filed by the Petitioner; and (4) the ruling on the Motion for Rehearing. Petitioner is not satisfied with the Title Board's ruling on the Motion for Rehearing. Consequently, this matter is properly before the Colorado Supreme Court.



## **GROUND FOR APPEAL**

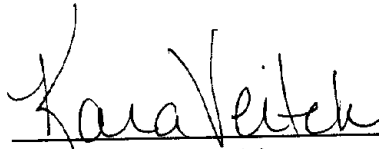
The Title Board lacked jurisdiction to set the title for the Proposed Initiative because it contains multiple subjects and amends unrelated provisions of the Colorado Constitution. This initiative would: (1) prohibit the State and its political subdivisions from providing services to certain people; (2) limit or eliminate the constitutional authority of home rule municipalities, which authority is currently vested solely in the elected representatives and voters in those jurisdictions, to provide services of their choosing to such people; and (3) limit or eliminate the constitutional authority of home rule counties, which are charged with providing mandatory services to all persons within their boundaries, to do so.

## **PRAYER FOR RELIEF**

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court remand the title set for proposed Initiative 2005-2006 #55 to the Title Board with instructions that the initiative be returned to the proponents for failure to comply with the single subject requirement.

Respectfully submitted this 25th day of January 2006.

**ISAACSON ROSENBAUM P.C.**

By: 

Mark G. Grueskin

Kara Veitch

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Denver, Colorado 80202

Telephone: (303) 292-5656

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**ATTORNEYS FOR PETITIONER**

**ADDRESS OF OBJECTOR:**

Manolo Gonzalez-Estay  
604 South Gilpin Street  
Denver, Colorado 80209

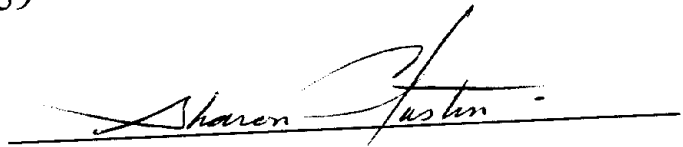
**CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of January 2006, a true and correct copy of the foregoing Petition for Review was placed in the United States mail, postage prepaid, to the following:

Maurice G. Knaizer, Esq.  
Office of the Attorney General  
1575 Sherman Street, 5<sup>th</sup> Floor  
Denver, Colorado 80203

William G. Herron  
31448 Banff Court  
Evergreen, Colorado 80439

Janice M. Herron  
31448 Banff Court  
Evergreen, Colorado 80439

  
Sharon Austin



# STATE OF COLORADO

DEPARTMENT OF  
STATE

## CERTIFICATE

I, **GINETTE DENNIS**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the text, motion for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2005-2006 #55".

.....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 23rd day of January, 2006.

*GINETTE DENNIS*

SECRETARY OF STATE



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DEC 21 2005

Ch. 110  
10-11-05  
wcc

2005-2006 #55 Attachment (1): Final Amendment language

ELECTIONS / LEGISLATION  
SECRETARY OF STATE

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

**SECTION 1. Article V of the Colorado constitution is amended BY THE ADDITION OF A NEW SECTION to read:**

**Section 51. Restrictions on Non-Emergency Services.**

- (1) Except as mandated by federal law, the provision of non-emergency services by the state of Colorado, or any county, city, or other political subdivision thereof, is restricted to citizens of and aliens lawfully present in the United States of America.
- (2) Any person lawfully residing in the state of Colorado shall have standing to sue the state of Colorado, or any county, city, or other political subdivision of the state of Colorado, to enforce this section.
  - (a) Courts of record of the state of Colorado shall have jurisdiction to hear cases brought to enforce this section.
  - (b) The general assembly may provide reasonable and appropriate limits on the time and manner of suits brought under this section.
- (3) The general assembly shall have the authority to implement this section by definitions and other appropriate legislation.

**SECTION 2. Effective date – applicability.** This section shall take effect thirty days from the date of adjournment of the regular session of the general assembly following the proclamation of the vote by the governor, and shall apply to causes of action accruing on or after said date.

William G. Herron, Ph.D.  
31448 Banff Court  
Evergreen, CO 80439  
303-674-4955  
[wgherron@comcast.net](mailto:wgherron@comcast.net)

Janice M. Herron  
3448 Banff Court  
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**RECEIVED**

JAN 11 2006

ELECTIONS/LICENSING  
SECRETARY OF STATE  
COLORADO TITLE SETTING BOARD

Ch.  
via email  
3:01 p.m.

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In re Title and Ballot Title and Summary Set for Initiative 2005-2006 #55 ("Restrictions on Government Services to Illegal Immigrants")

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MOTION FOR REHEARING

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On behalf of Manolo Gonzalez-Estay, 604 South Gilpin Street, Denver, a registered elector of the State of Colorado, the undersigned hereby files this Motion for Rehearing in connection with the title, ballot title and summary set for Initiative 2005-2006 #55 ("Restrictions on Government Services to Illegal Immigrants") at the Title Board hearing held on January 4, 2006.

The Title Board lacked jurisdiction because the measure is comprised of multiple subjects, as it amends or repeals multiple, unrelated provisions of the Colorado Constitution without regard to the prohibition on access to "non-emergency" services to certain persons. Such multiple subjects violate Article V, § 1(5.5) of the Colorado Constitution and include:

1. The initiative amends provisions of the Colorado Constitution that apply to all persons or specific groups of persons.

(a) Article II, § 6 ("Courts of justice shall be open to every person...");

(b) Article II, § 21 ("The privilege of the writ of habeas corpus shall never be suspended...");

(c) Article II, § 25 ("No person shall be deprived of life, liberty or property, without due process of law");

(d) Article V, § 50 (Amendment 3) (use of public funds acceptable for "those medical services necessary to prevent the death of either a pregnant woman or her unborn child under circumstances where every reasonable effort is made to preserve the life of each"); and

(e) Article XV, § 6 ("All individuals... shall have equal rights to have persons and property transported over any railroad in the state...").

2. The initiative amends the original jurisdiction of various courts of record:<sup>1</sup>

(a) Colorado Supreme Court, Article VI, § 3 ("The supreme court shall have the power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, injunction and such other original and remedial writs as may be provided by rule of court with authority to hear and determine the same..."); and

(b) Denver Probate Court, Article VI, § 4 ("The probate court of the city and county of Denver shall have such jurisdiction as provided by section 9, subsection (3) of this article...");

3. Contrary to Article XX, § 8, the initiative amends the otherwise exclusive jurisdiction of home rule municipalities dealing with:

(a) Jurisdiction of municipal courts, Article XX, § 6(c);

(b) Jurisdiction of police courts, Article XX, § 6(b); and

(c) Provisions of services deemed essential or proper, Article XX, § 6.


4. The initiative amends the authority of the City and County of Denver to conduct and operate water works, light plants, power plants, transportation systems, heating plants, and any other public utilities or works. Article XX, § 1.

5. The initiative amends the requirement that home rule counties to provide all mandatory county functions, services and facilities. Article XIV, § 16(3).

Please set a rehearing in this matter for the next Title Board meeting.

Respectfully submitted this 11th day of January, 2006.

ISAACSON ROSENBAUM P.C.



Mark G. Grueskin, #14621

Kara Veitch, #32227

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Denver, CO 80202

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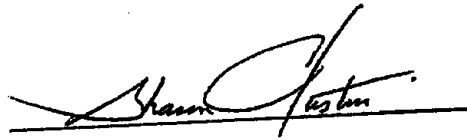
<sup>1</sup> *Office of the State Court Adm'r v. Background Info. Servs., Inc.*, 994 P.2d 420, 422 (Colo. 1999); Colo. Rev. Stat. § 13-1-111.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 11th day of January, 2006, a true and correct copy of the foregoing **MOTION FOR REHEARING** was served via first class mail, postage prepaid, to the following:

William G. Herron  
31448 Banff Court  
Evergreen, CO 80439

Janice Herron  
31448 Banff Court  
Evergreen, Colorado 80439



A handwritten signature in cursive script, appearing to read "Shann Austin", is written over a horizontal line.

**Ballot Title Setting Board**

**Proposed Initiative 2005-2006 #55<sup>1</sup>**

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

An amendment to the Colorado constitution concerning the restriction of non-emergency government services to certain persons who are lawfully present in the United States, and, in connection therewith, restricting the provision of non-emergency services by the State and local governments to United States citizens and aliens lawfully present in the United States, except as mandated by federal law; and providing for the implementation and enforcement of this restriction.

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 the restriction of non-emergency government services to certain persons who are lawfully present in the United States, and, in connection therewith, restricting the provision of non-emergency services by the State and local governments to United States citizens and aliens lawfully present in the United States, except as mandated by federal law; and providing for the implementation and enforcement of this restriction?

*Hearing January 4, 2006:  
Single subject approved; staff draft amended; titles set.  
Hearing adjourned 2:35 p.m.*

*Hearing January 18, 2006:  
Motion for Rehearing denied.  
Hearing adjourned 2:53 p.m.*

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<sup>1</sup> Unofficially captioned "Restrictions on Government Services to Illegal Immigrants" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.