

<p>SUPREME COURT, STATE OF COLORADO Court Address: 2 East 14th Avenue Denver, Colorado 80203</p>	
<p>ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2006) Appeal from the Ballot Title Setting Board</p> <p>Petitioners:</p> <p>Christopher P. Elliott, Martin F. Russell and Paul D. Nelson, Jr., Objectors,</p> <p>v.</p> <p>Respondents:</p> <p>Daniel Hayes and Eric Levine, Proponents, and</p> <p>Title Board: WILLIAM A. HOBBS, JASON DUNN, and DAN CARTIN</p>	<div data-bbox="906 367 1318 634" style="border: 1px solid black; padding: 5px; text-align: center;"> <p>FILED IN THE SUPREME COURT</p> <div style="border: 1px solid black; padding: 5px; display: inline-block; margin: 5px 0;"> <p>MAR - 8 2006</p> </div> <p>OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK</p> </div> <p style="font-size: 24pt; font-weight: bold; margin-top: 20px;">06SA73</p> <p style="text-align: center; font-weight: bold; margin-top: 20px;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for Petitioners: Mark G. Grueskin, #14621 Daniel C. Stiles, #35695 Isaacson Rosenbaum P.C. 633 17th Street, Suite 2200 Denver, Colorado 80202 Phone Number: 303-292-5656 Fax Number: 303-292-3152 E-mail: mgrueskin@ir-law.com; dstiles@ir- law.com</p>	<p>Case No.:</p>
<p>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2005-2006 #76(a) ("LIMITATIONS ON HOUSING GROWTH")</p>	

Christopher P. Elliott, Martin F. Russell, and Paul D. Nelson, Jr. ("Petitioners"), being registered electors of the State of Colorado, through their undersigned counsel, respectfully petition this Court pursuant to § 1-40-107(2), C.R.S. (2006), to review the actions of the Ballot Title Setting Board with respect to the setting of the title, ballot title, and submission clause for proposed Initiative 2005-2006 #76(a) ("Limitations on Housing Growth").

I. Actions of the Ballot Title Setting Board

The Title Board conducted its initial public meeting and set titles for proposed Initiative 2005-2006 #76(a) on February 15, 2006. The Petitioners filed a Motion for Rehearing pursuant to § 1-40-107(1), C.R.S. (2005), on February 22, 2006. The Motion for Rehearing was heard at the next regularly scheduled meeting of the Title Board on March 1, 2006. At the rehearing, the Board granted in part and denied in part Petitioners' Motion. Petitioners hereby seek review of the final action of the Title Board with regard to proposed Initiative 2005-2006 #76(a) pursuant to § 1-40-107(2), C.R.S. (2006).

II. Issues Presented

- I. Does the measure contain a second subject, given that it surreptitiously restricts the constitutional power granted to all elected local officials,

including those elected in home rule jurisdictions, by insulating voter-approved growth limit measures from any "legislative inhibition or penalty?"

- II. Did the Title Board err by failing to state in the ballot title that the proposed initiative restricts the constitutional power granted to all elected local officials, including those elected in home rule jurisdictions, by insulating voter-approved growth limit measures from any "legislative inhibition or penalty?"
- III. Did the Title Board err by failing to state in the ballot title that the proposed initiative fails to state that elections are mandated in the named counties for indefinite enactment of the initiative's growth limitation?
- IV. Did the Title Board err by failing to state in the ballot title that county-imposed growth limits must be applied uniformly "among local governments" within a county?

III. Supporting Documentation


As required by § 1-40-107(2), C.R.S. (2006), a certified copy of the Petition, with the titles and submission clause of the proposed constitutional amendment, together with a certified copy of the Motion for Rehearing and the rulings thereon, are submitted herewith.

IV. Relief Requested

Petitioners respectfully request this Court to reverse the actions of the Title Board with directions to decline to set a title and to return the proposed Initiative to the proponents.

Respectfully submitted this 8th day of March, 2006.

ISAACSON ROSENBAUM P.C.

By: 
Mark G. Grueskin, #14621
Daniel C. Stiles, #35695

ATTORNEYS FOR PETITIONERS

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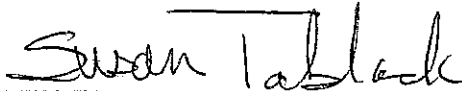
CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of March, 2006, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2005-2006 #76(a) ("LIMITATIONS ON HOUSING GROWTH")** was placed in the United States mail, postage prepaid, to the following:

Daniel Hayes
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Arvada, Colorado 80007

Eric Levine
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Fort Collins, Colorado 80521

Maurice G. Knaizer, Esq.
Deputy Attorney General
Colorado Department of Law
1525 Sherman Street, 5th Floor
Denver, Colorado 80203





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 #76(a)"

..

.....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 3rd day of March, 2006.

GINETTE DENNIS

SECRETARY OF STATE

Proposed Initiative #76(a)

Final

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SECRETARY OF STATE

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BE IT ENACTED BY THE PEOPLE OF THE STATE OF COLORADO:
ARTICLE XVIII OF THE CONSTITUTION OF THE STATE OF COLORADO IS AMENDED BY THE
ADDITION OF A NEW SECTION TO READ:

Section 15. Colorado growth limitation

(1) THE ELECTORS OF EVERY CITY, TOWN, CITY AND COUNTY, OR LOCAL COUNTY, WHETHER STATUTORY OR HOME RULE, RESERVE THE RIGHT TO LIMIT HOUSING GROWTH WITHOUT LEGISLATIVE INHIBITION OR PENALTY BY INITIATIVE AND REFERENDUM. THIS RIGHT IS FURTHER RESERVED ON A COUNTYWIDE BASIS WHEREBY ELECTORS THROUGHOUT A COUNTY MAY ELECT TO LIMIT HOUSING GROWTH UNIFORMLY IN EVERY CITY, TOWN, CITY AND COUNTY, LOCAL COUNTY, AND ANY PART OF SUCH, WHETHER STATUTORY OR HOME RULE, WITHIN SUCH COUNTY.

(2) PRIVATELY OWNED RESIDENTIAL HOUSING GROWTH IN THE COUNTIES OF ADAMS, ARAPAHOE, BOULDER, DOUGLAS, EL PASO, JEFFERSON AND LARIMER SHALL NOT EXCEED ONE PERCENT ANNUALLY FOR THE YEARS 2007, 2008, 2009, AND 2010. IN SAID COUNTIES EACH LOCAL GOVERNMENT AND ANY PART OF SUCH, WHETHER STATUTORY OR HOME RULE, SHALL ALLOT BUILDING PERMITS SO THAT SAID HOUSING GROWTH DOES NOT EXCEED A ONE PERCENT ANNUAL GROWTH RATE IN THE TOTAL NUMBER OF DWELLING UNITS IN EACH SAID YEAR. AT LEAST THIRTY PERCENT OF THE HOUSING SUBJECT TO THE LIMITATION SHALL BE AFFORDABLE HOUSING AND AFFORDABLE SENIOR HOUSING AS SHALL BE DEFINED BY THE GENERAL ASSEMBLY AND SUBJECT TO INITIATIVE AND REFERENDUM IN EACH LOCAL GOVERNMENT. BETWEEN NOVEMBER 8, 2006, AND JANUARY 1, 2007, NO PERMITS TO BUILD NEW PRIVATELY OWNED RESIDENTIAL HOUSING UNITS SHALL BE ISSUED WITHIN SAID COUNTIES. THIS MEASURE SHALL BE CALLED FOR THE 2010 NOVEMBER GENERAL ELECTION FOR COUNTYWIDE ELECTORS IN EACH OF THE SAID COUNTIES TO ENACT INDEFINITELY SUBJECT TO SUBSEQUENT MEASURES OR REPEAL BEGINNING IN 2011.

(3) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ANNUAL GROWTH" MEANS THAT WHICH OCCURS IN A PARTICULAR CALENDAR YEAR MEASURED IN THE TOTAL NUMBER OF DWELLING UNITS ABOVE THAT FOR THE PREVIOUS YEAR.

(b) "DWELLING UNIT" MEANS A BUILDING OR ANY PORTION OF A BUILDING DESIGNED FOR OCCUPANCY AS COMPLETE, INDEPENDENT LIVING QUARTERS FOR ONE OR MORE PERSONS, HAVING DIRECT ACCESS FROM THE OUTSIDE OF THE BUILDING OR THROUGH A COMMON HALL AND HAVING LIVING, SLEEPING, KITCHEN AND SANITARY FACILITIES FOR THE EXCLUSIVE USE OF THE OCCUPANTS. A DETACHED HOME HAS ONE DWELLING UNIT WHEREAS AN APARTMENT BUILDING WITH EIGHTY APARTMENTS HAS EIGHTY DWELLING UNITS.

(c) "LOCAL COUNTY" MEANS THAT PART OF A COUNTY MOST GENERALLY KNOWN AS THE UNINCORPORATED OR STATUTORY COUNTY BUT MAY BE HOME RULE WHEN A CHARTER IS ADOPTED. LOCAL COUNTY IS A LOCAL GOVERNMENT WITH A DISTINCT ZONING JURISDICTION WHICH DOES NOT INCLUDE A CITY, TOWN, OR CITY AND COUNTY.

(d) "LOCAL GOVERNMENT" MEANS A CITY, TOWN, CITY AND COUNTY, OR LOCAL COUNTY, WHETHER STATUTORY OR HOME RULE.

(e) "PRIVATELY OWNED RESIDENTIAL HOUSING" MEANS A SUMMATION OF DWELLING UNITS WHICH ARE RESIDENTIALLY ZONED OR OTHERWISE INTENDED FOR PRIVATE RESIDENTIAL USE. THOSE OWNED BY A FEDERAL, STATE OR LOCAL GOVERNMENT ENTITY, OR AN EDUCATIONAL OR MEDICAL FACILITY ARE EXCLUDED.

PROPOSERS:
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FEB 22 2006

ELECTIONS / LICENSING
SECRETARY OF STATE

COLORADO TITLE SETTING BOARD

In re Title and Ballot Title and Submission Clause Set For Initiative 2005-06 #76(a)

MOTION FOR REHEARING

On behalf of Christopher P. Elliot, Martin F. Russell, and Paul D. Nelson, Jr., registered electors of the State of Colorado, the undersigned hereby moves for a rehearing of the title, ballot title and summary for Initiative 2005-06 #76(a) at the Title Board ("Board") hearing held on February 15, 2006. As grounds, the Petitioners state as follows:

1. The Title Board lacked jurisdiction for the following reasons:
 - a. Proponents' removal of the proposed initiative's criminal enforcement provisions requires resubmission to the directors of the legislative counsel and office of legislative legal services.
 - b. Proponents failed to submit the amended proposed initiative to the directors of the legislative counsel and office of legislative legal services before submitting it to the secretary of state.
2. The title set by the Board violates the single subject requirement for initiated measures because the measure eliminates the home rule powers delegated to elected representatives to determine growth policies within their jurisdictions.
3. The title set by the Board is misleading, inaccurate, and incomplete for the following reasons:
 - a. The title fails to state that this measure eliminates the ability of elected representatives in home rule jurisdictions- both cities and counties - to determine growth policies within their jurisdictions.
 - b. The use of "or" rather than "and" between affordable housing and affordable senior housing implies that jurisdictions will have to choose between these two objectives, whereas the measure provides that the 30% goal can be met by an aggregation of the two types of housing.
 - c. The phrase "short-term moratorium" relating to the issuance of residential building permits is vague and uninformative.

d. The fact that there is a prohibition on issuing building permits for 2 months appears to relate to all counties, whereas it really only applies to the named counties.

e. The title fails to state that elections are mandated in the named counties for indefinite enactment of this limitation.

f. The title fails to state that county-imposed growth limits must be applied uniformly "among local governments" within a county.

Respectfully submitted this 22nd day of February, 2006.

ISAACSON ROSENBAUM P.C.



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Daniel C. Stiles, #35965

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Paul D. Nelson, Jr.
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Aurora, CO 80011

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February, 2006, a true and correct copy of the foregoing **MOTION FOR REHEARING** was placed in the United States mail, postage prepaid, to the following:

Daniel Hayes
15409 HWY 72
Arvada, Colorado 80007

Eric Levine
514 ½ N Shields
Fort Collins, Colorado 80521



Ballot Title Setting Board

Proposed Initiative 2005-2006 #76(a)¹

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

An amendment to the Colorado constitution concerning a limitation on housing growth, and, in connection therewith, granting the electors of local governments the right to limit housing growth within their boundaries by initiative and referendum, allowing county voters to limit housing growth uniformly within a county, limiting privately owned residential housing in the counties of Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, and Larimer for the years 2007 through 2010 to one percent annual growth, requiring at least thirty percent of the housing growth in such counties be affordable housing and affordable senior housing, implementing a moratorium until January 1, 2007, on the issuance of residential building permits in such counties following voter approval of the measure, and defining terms used in the measure.

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 a limitation on housing growth, and, in connection therewith, granting the electors of local governments the right to limit housing growth within their boundaries by initiative and referendum, allowing county voters to limit housing growth uniformly within a county, limiting privately owned residential housing in the counties of Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, and Larimer for the years 2007 through 2010 to one percent annual growth, requiring at least thirty percent of the housing growth in such counties be affordable housing and affordable senior housing, implementing a moratorium until January 1, 2007, on the issuance of residential building permits in such counties following voter approval of the measure, and defining terms used in the measure?

Hearing February 15, 2006:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 2:46 p.m.

Hearing March 1, 2006:

Motion for Rehearing granted in part to the extent Board amended titles; denied in all other respects.

Hearing adjourned 3:17 p.m.

¹ Unofficially captioned "Limitations on Housing Growth" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.