

Certification of Word Count: 2,357

<p>SUPREME COURT, STATE OF COLORADO</p> <p>2 East 14<sup>th</sup> Avenue Denver, CO 80203</p>	<p>FILED IN THE SUPREME COURT</p> <p>APR 17 2006</p> <p>CLERK OF THE STATE OF COLORADO SUSAN M. PESTON, CLERK</p>
<p>ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2006) Appeal from the Ballot Title Setting Board</p>	<p>▲ COURT USE ONLY ▲</p>
<p>IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2005-2006, #76(A) CHRISTOPHER P. ELLIOT, MARTIN F. RUSSELL AND PAUL D. NELSON, JR., OBJECTORS,</p> <p>Petitioners,</p> <p>v.</p> <p>DANIEL HAYES AND ERIC LEVINE, PROPONENTS; WILLIAM A. HOBBS, JASON DUNN AND DAN CARTIN, TITLE BOARD,</p> <p>Respondents.</p>	<p>Case No.: 06 SA 73</p>
<p>JOHN W. SUTHERS, Attorney General MAURICE G. KNAIZER, Deputy Attorney General* 1525 Sherman Street, 5<sup>th</sup> Floor Denver, CO 80203 (303) 866-5380 Registration Number: 05264 *Counsel of Record</p>	
<p><b>ANSWER BRIEF OF TITLE BOARD</b></p>	

# TABLE OF CONTENTS

	<b>PAGE</b>
STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE CASE.....	1
SUMMARY OF THE ARGUMENT .....	2
ARGUMENT .....	3
I. THE MEASURE INCLUDES ONLY ONE SUBJECT: LIMITATION ON HOUSING GROWTH .....	3
II. THE TITLES ARE FAIR, CLEAR AND ACCURATE.....	6
CONCLUSION .....	12

## TABLE OF AUTHORITIES

## PAGE

### CASES

Bernzen v. Boulder, 186 Colo. 81, 525 P.2d 416 (1974).....	9
In re Ballot Title 1999-2000 #25, 974 P.2d 458 (Colo. 1999).....	4
In re Proposed Initiative “Public Rights in Water II”, 898 P.2d 1076 (Colo. 1995).....	4
In re Proposed Initiative Concerning “Automobile Insurance Coverage”, 877 P.2d 853 (Colo. 1994).....	7
In re Title, Ballot Title and Submission Clause and Summary for 1999-00 #256, 12 P.3d 246 (Colo. 2000).....	5, 7
In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 #235(a), 3 P.3d 1219 (Colo. 2000).....	5
In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-02 #43, 46 P.3d 438, 442 (Colo. 2002)(#43).....	4
In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002 #21, 44 P.3d 213 (Colo. 2002).....	3
In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002, #22, 44 P.3d 213 (Colo. 2002).....	3
In re Title, Ballot Title and Submission Clause, and Summary Adopted April 17, 1996 by the Title Setting Board Pertaining to a Proposed Initiative Statute Proposed by Arthur Apple and James Meeker, 920 P.2d 798 (Colo. 1996).....	9
In re Title, Ballot Title and Submission Clause, and Summary for 1997-98 No. 74, 962 P.2d 927, 929 (Colo. 1998).....	4
In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #246(e), 8 P.3d 1194, 1197 (Colo. 2000).....	7
In re Title, Ballot Title and Submission Clause, and Summary for No. 26 Concerning School Impact Fees, 954 P.2d 586 (Colo. 1998).....	8
Margolis v. District Court, 638 P.2d 297 (Colo. 1981).....	9
Yenter v. Baker, 126 Colo. 232 P.2d 311 (1952).....	8

**TABLE OF AUTHORITIES**

**PAGE**

**CONSTITUTIONS**

Colo. Const. art. V, § 1(5.5)..... 3

**STATUTES**

§ 1-40-106(3), C.R.S. (2005)..... 6

William A. Hobbs, Jason Dunn and Dan Cartin, in their capacities as members of the Title Board (hereinafter "Board"), hereby submit their Answer Brief.

### **STATEMENT OF THE ISSUES**

- 1. Does proposed initiative #76(a) contain a single subject: a limitation on housing growth?**
- 2. Did the Board set clear and fair titles when the titles do not discuss limitations on the power of local governments to interfere with the voter-initiated measures concerning limits on housing growth?**
- 3. Did the Board set clear and fair titles when the titles do not state that the proposed initiative mandates elections in designated counties after 2010?**
- 4. Did the Board set clear and fair titles when the titles do not state that growth limits must be uniformly applied among local governments within the county?**

### **STATEMENT OF THE CASE**

Proposed initiative #76(a), if enacted, would establish certain limitations on housing growth. It limits the number of building permits which can be issued by the counties of Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson and

Larimer counties for the years 2007 through 2010. In November 2010, the voters of these counties will be asked to vote on whether to extend these limits indefinitely, subject to future votes. The measure also extends to electors of every city, town, city and county, or local county, whether statutory or home rule, the right of initiative and referendum with regarding to housing growth. The measure prevents these local governments from inhibiting or penalizing the right of initiative and referendum.

The measure and the titles are attached to this brief.

### **SUMMARY OF THE ARGUMENT**

The proposed initiative contains only one subject: limitations on housing growth. It places specific limits on growth in certain counties through 2010, after which the voters in these counties may vote to enact these limits indefinitely. It extends the right of initiative and referendum concerning housing growth to electors of every city, town, city and county, or local county. The provisions are directly related to the single subject of limitations on housing.

The titles set by the Board are fair, clear and accurate. Although the titles do not describe all of the details of the proposed measure, they do include its central features.

## ARGUMENT

### I. THE MEASURE INCLUDES ONLY ONE SUBJECT: LIMITATION ON HOUSING GROWTH.

The Objectors contend that the Board should not have set titles because #76(a) contains at least two subjects, thereby violating Colo. Const. art. V, § 1(5.5), which states:

No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in the title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls.

A proposed initiative violates the single subject rule if it “relate[s] to more than one subject and ... [has] at least two distinct and separate purposes which are not dependent upon or connected with each other.” *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002 #21 and #22*, 44 P.3d 213, 215 (Colo. 2002)(quoting *In re Proposed Initiative “Public Rights in Water II”*, 898 P.2d 1076, 1078-79 (Colo. 1995) (#21) A proposed initiative that “tends to effect or to carry out one general objective or purpose presents only one subject.”

*In re Ballot Title 1999-2000 #25*, 974 P.2d 458, 463 (Colo. 1999). The single subject rule both prevents joinder of multiple subjects to secure the support of various factions and prevents voter fraud and surprise. *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-02 #43*, 46 P.3d 438, 442 (Colo. 2002)(#43).

The Court will not address the merits of a proposed measure, interpret it or construe its future legal effects. #21, 44 P.3d at 215-16; #43, 46 P.3d at 443. The Court may engage in a limited inquiry into the meaning of terms within a proposed measure if necessary to review an allegation that the measure violates the single subject rule. #21, 44 P.3d at 216. The single subject rule must be liberally construed to avoid unduly restricting the right of initiative. *In re Title, Ballot Title and Submission Clause, and Summary for 1997-98 No. 74*, 962 P.2d 927, 929 (Colo. 1998).

The Objectors contend that the proposed measure has two subjects. In addition to the limitation on growth, they argue that the measure limits the inherent powers of home rule cities. (Objectors' Brief, pp. 5-10) This Court rejected a similar challenge in *In re Title, Ballot Title and Submission Clause and Summary for 1999-00 #256*, 12 P.3d 246 (Colo. 2000) (#256). In #256, the initiative



proposed to manage growth by limiting areas of development. The measure covered all statutory, charter and home rule cities and towns, as well as all home rule and statutory counties, and cities and counties. It prevented local governments from approving development outside of voter-approved growth areas. The initiative required that growth maps be coordinated among jurisdictions, thereby giving persons residing outside a home rule city a veto power over land in home rule cities. Opponents argued that the shift of decision-making power from the legislative bodies to the voters constituted a second subject. *Id.* at 253-54. The Court rejected this argument. “The referendum requirement reflects a choice that the voters have a more direct say in managing future development; the curtailment of home rule powers is a necessary result of that choice.” *Id.* at 254.

The Court reached a similar conclusion in a single subject challenge to another land use initiative. *In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 #235(a)*, 3 P.3d 1219 (Colo. 2000). In that case, the measure proposed a growth formula that limited the rate of future development. The opponents argued that the measure altered the powers of home rule municipalities by limiting their authority in areas that were not necessary to conserve land development and by prescribing certain election dates. *Id.* at 1224.

The Court held that these limitations and requirements related to limiting future development; therefore, they did not constitute a separate subject.

In the measure before this Court, the right of initiative and referendum is linked directly to the limitation on housing growth. It is the means by which housing growth limitations may be imposed. However, the right does not extend beyond voting to limit housing growth. Therefore, the provision regarding the right of initiative and referendum does not constitute a separate subject.

## **II. THE TITLES ARE FAIR, CLEAR AND ACCURATE.**

Section 1-40-106(3), C.R.S. (2005) establishes the standard for setting titles.

It provides:

In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general effect of a “yes” or “no” vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly state the true intent and meaning thereof, together with the ballot title and submission clause, shall be completed within two weeks after the first meeting of the title board...Ballot titles shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and shall be in the form of a question which may be answered “yes” (to vote in favor of the proposed law or constitutional amendment) or “no” (to vote against the proposed law or constitutional amendment) and which

shall unambiguously state the principle of the provision sought to be added, amended or repealed.

The titles must be fair, clear, accurate and complete. #256, 12 P.3d at 256. However, the Board is not required to set out every detail. #21, 44 P.3d at 222. In setting titles, the Board may not ascertain the measure's efficacy, or its practical or legal effects. #256, 12 P.3d at 257; *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #246(e)*, 8 P.3d 1194, 1197 (Colo. 2000). The Court does not demand that the Board draft the best possible title. #256, at p. 219. The Court grants great deference to the Board in the exercise of its drafting authority. *Id.* The Court will reverse the Board's decision only if the titles are insufficient, unfair or misleading. *In re Proposed Initiative Concerning "Automobile Insurance Coverage"*, 877 P.2d 853, 857 (Colo. 1994).

The Objectors assert that the titles are flawed because they do not include the phrase "without legislative inhibition or penalty". They contend this phrase is significant because local governments will be unable to exercise their discretion to modify any limits imposed by voters through the initiative and referendum process. (Objectors' Brief, pp. 12-13)

The Court must reject this argument. The Objectors assume that this phrase precludes any legislative action by the local governmental bodies. However, this is not the only interpretation. It can be interpreted to mean that the local governments cannot impose undue burdens upon the ability of the voters to initiate or refer measures. *Cf. Yenter v. Baker*, 126 Colo. 232, 248 P.2d 311 (1952). Alternatively, it can mean, as the Objector's suggest, that legislative bodies may not amend or repeal the limits set by voters. Because this phrase is inherently ambiguous, the Board could rightfully decline to include the phrase in the titles. *In re Title, Ballot Title and Submission Clause, and Summary for No. 26 Concerning School Impact Fees*, 954 P.2d 586, 592 (Colo. 1998). To adopt the Objectors' position, the Board and this Court would necessarily become involved in the prohibited function of interpreting the meaning of proposed language or suggesting how it will be applied. *Id.*

Moreover, assuming that the Objectors' interpretation is accurate, the restriction is not particularly novel and is not a central feature of the measure. It is designed to ensure that a central feature of the measure, the right of initiative and referendum, is not undermined. The rights of initiative and referendum are "fundamental rights of a republican form of government which the people have reserved unto themselves." *Bernzen v. Boulder*, 186 Colo. 81, 525 P.2d 416

(1974). Limits on the power of initiative and referendum will be strictly construed. *Margolis v. District Court*, 638 P.2d 297, 302 (Colo. 1981). This is particularly true in the context of land use regulations. “Indeed, a heightened community sensitivity to the quality of the living environment and an increased skepticism of the judgment of elected officials provide much of the impetus for the voters’ exercise of the powers of referenda and initiative in the zoning context.” *Id.* at p. 303.

Any limits on the power of legislative bodies to reverse a decision of the electorate are not unusual or unexpected. As such, there is no need to mention this portion of the measure in the title.

The Objectors next contend that the titles are inaccurate and incomplete because they do not mention that the measure requires an election to extend, amend or repeal the limited moratorium in the counties named in the proposal. (Objectors’ Brief, pp. 13-14) This Court has rejected a similar claim. *In re Title, Ballot Title and Submission Clause, and Summary Adopted April 17, 1996 by the Title Setting Board Pertaining to a Proposed Initiative Statute Proposed by Arthur Apple and James Meeker*, 920 P.2d 798 (Colo. 1996). The proposed measure sought to revise the enhanced emissions testing program in the six-county metropolitan area. The measure had two caveats: (1) proposed changes to the

program must be submitted for approval under the federal Clean Air Act, and (2) the existing programs would be continued if the measure fails to achieve certain level of benefits. Each contingency affected the length and timing of the measure. Opponents charged that the titles were inaccurate because they failed to mention these subsequent contingencies. The Court rejected the claim, deeming neither feature central to the measure. *Id.* at p. 803.

Likewise, the titles set in proposal 76(a) state that the limits on housing will be imposed through 2010. There is no evidence in the record that the decisions of signers or voters in 2006 will be influenced by a requirement to hold an election to extend the limits four years hence. Therefore, the Board properly declined to mention this fact in the titles.

Finally, the Objectors contend that the titles are misleading because they do not disclose that the limitation must be applied uniformly among local governments within a county. (Objectors' Brief, pp. 15-16) According to the Objectors, "the explicit terms of the measure *will require* each city, town, and county within a county to cap their growth...." (Emphasis added) (Objectors' Brief, p. 15) The measure does not mandate that all growth limits in the county

must be uniform. Growth limits will be uniform only if county voters, in their discretion, vote to make the uniform.

Moreover, the effect of a county-wide vote on growth limits imposed by municipal voters is uncertain. The measure does not state whether county-wide vote limits apply only to those areas of the county that do not have growth limits or whether they will supersede existing growth limits.

Finally the titles do inform the signers and voters about the interplay between votes to impose municipal growth limits and votes to impose county-wide growth limits. The titles state:

...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.....

The first phrase indicates that the voters within local governments may impose growth limits. The second phrase states that all voters within a county may impose limits uniformly throughout a county. Thus, signers and voters are fairly informed about the relationship between the voter-imposed growth limits on municipalities and voter-imposed growth limits throughout the county.

## CONCLUSION

For the above-stated reasons, the Board respectfully requests that the Court approve the titles set by the Board.

JOHN W. SUTHERS

Attorney General



MAURICE G. KNAIZER, 05264\*

Deputy Attorney General

Public Officials

State Services Section

Attorneys for Title Board

\*Counsel of Record



CERTIFICATE OF SERVICE


This is to certify that I have duly served the within ANSWER BRIEF OF TITLE BOARD upon all parties herein by depositing copies of same in the United States mail, Express Mail, postage prepaid, at Denver, Colorado, this 17<sup>th</sup> day of April

2006 addressed as follows:

Mark G. Grueskin  
Daniel C. Stiles  
Isacson Rosenbaum P.C.  
633 17<sup>th</sup> Street, Suite 2200  
Denver, Colorado 80202

Daniel Hayes  
15409 HWY 72  
Arvada, Colorado 80007

Eric Levine  
514 ½ N Shields  
Fort Collins, Colorado 80521

A handwritten signature in black ink, appearing to read "Daniel Dade", is written over a horizontal line.

11000000  
Initiative  
#76(a)

Final

RECEIVED

FEB 02 2006

ELECTIONS / LICENSING  
SECRETARY OF STATE

Ch  
1/22/06  
WCC

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:  
DANIEL HAYES  
15409 HWY 72 ARVADA CO. 80007  
COLORADOGROWTHLIMIT@YAHOO.COM

ERIC LEVINE  
FT. COLLINS CO 80521  
ERICLEVINE@JUNO.COM

## Ballot Title Setting Board

### **Proposed Initiative 2005-2006 #76(a)<sup>1</sup>**

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.*

---

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