

SUPREME COURT OF COLORADO  
101 West Colfax Avenue, Suite 800  
Denver, CO 80202

Original Proceeding  
Pursuant to Colo. Rev. Stat. §1-40-107(2) (2011)  
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and Submission Clause  
for Proposed Initiatives 2011-2012 #67, #68 and #69

**Petitioner:** PHILIP HAYES,

v.

**Respondents:** DAVID OTTKE and JOHN SLOTA,

and

**Title Board:** SUZANNE STAIERT; DANIEL DOMENICO;  
and SHARON EUBANKS.

Attorney for Respondents Ottke and Slota (Proponents):  
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FILED IN THE  
SUPREME COURT

**MAY 15 2012**

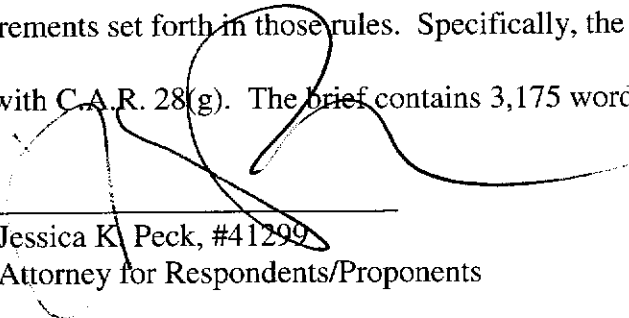
OF THE STATE OF COLORADO  
Christopher T. Ryan, Clerk

**Supreme Court Case Number:**  
**2012SA117**

**OPENING BRIEF OF RESPONDENTS/PETITIONERS**

## CERTIFICATE OF COMPLIANCE

I Hereby certify that this brief complies with all applicable requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in those rules. Specifically, the undersigned certifies that the brief complies with C.A.R. 28(g). The brief contains 3,175 words.



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Jessica K. Peck, #41299  
Attorney for Respondents/Proponents

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**In re Ballot Title 1997-98 #62**, 961 P.2d 1077, 1082 (Colo. 1998).  
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- C.R.S. §1-40-106.5., 1-40-106.5(1)(a)**  
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**Colo. Const. Art. V, Sec. 1**

Respondents David Ottke and John Slota, Proponents, respectfully submit the following Opening Brief pursuant to Order of Court dated May 15, 2012:

**STATEMENT OF ISSUES PRESENTED FOR REVIEW**

1. Whether Initiative titles violate the single subject requirement of Colo. Const. Art. V, Sec. 1 and C.R.S. §1-40-106.5.
2. Whether Initiative titles, as set by Title Board, are misleading or inaccurate.
3. Whether Title Board properly set titles for Proposed Initiatives in compliance with attendance mandates for proponents as set forth under C.R.S. §1-40-106(4)(a)(d).

**STATEMENT OF THE CASE**

**A. Nature of the Case, Procedural History and Disposition**

Through this original proceeding, Petitioner Philip Hayes (hereafter "Petitioner") seeks to invalidate proposed Initiatives #67, #68, and #69 ("Proposed Initiatives"), three similarly worded initiatives all united in a common purpose of protecting the citizen initiative process. Petitioner comes to this Court after Respondents Ottke and Slota (hereafter "Proponents") successfully navigated all Colorado rules and procedures required for proposed initiatives seeking ballot access.

Specifically, and after a review and comment hearing before the Offices of Legislative Council and Legislative Legal Services, Proponents submitted original, amended and final versions of Proposed Initiatives to the Secretary of State, seeking sought to have title set pursuant to C.R.S. §1-40-105(4).

The Secretary of State Title Board's (hereafter "Board") hearing, pursuant to C.R.S. §1-40-106, took place on April 4, 2012, where after an examination of whether Proposed Initiatives contained more than one subject or otherwise violated state law, the Board found that none of the three violated Colorado's single subject requirement and set title for all three. The language of

the Proposed Initiatives all concern the citizen initiative process, and but for differences as described below, are largely identical in their scope and purpose.

On April 11, 2012, Petitioner moved for rehearing, pursuant to C.R.S. §1-4-107(1). The Board set a procedural hearing to consider this matter for April 19, 2012, at which Petitioner's motion for rehearing was denied.

After failing to persuade the Board, Petitioners filed an original action in this Court, challenging Board's setting of title for all three Initiatives. Petitioners contend that Proponents "undisputedly failed to comply with the statutory mandate that both proponents must attend any Board proceeding at which the ballot measure and its ballot title are considered." Next, Petitioner asserts that all three titles in question contain multiple subjects. Finally, Petitioner alleges that titles were wrongly set because as currently constructed, they "fail to inform voters about the applicability of the new restraints on legislative authority to all previously adopted initiated statutes." Appended as Petitioner's Motion

**B. Facts Relevant to Issues Presented for Review:**

Each of the three proposed initiatives, when considered separately, contains one single subject. Further, each single subject has one distinct purpose and one clear effect. All three have been proposed to enhance protections of the citizen's initiative process. While each provides a slightly different language than the other two designed to achieving this purpose, they do not—either individually or collectively—violate the single subject requirement. In addition, Proponents complied with C.R.S. §1-40-106(4),(d), which governs attendance at Board hearings. Finally, while Petitioner argues that titles, as set by Board "are misleading, do not fairly and correctly express the true meaning of the initiative, do not unambiguously state the principles of

the provisions to be added to the constitution, and will lead to voter confusion,” Petitioner fails to present such arguments under the proper standard of review, which does not permit this Court to speculate about motives or objectives of Proponents, or as to outcomes should the Proposed Initiatives obtain sufficient voter approval.

As to the specific language of the initiatives: first, Amendment 67 would require that any repeal or amendment to a citizen-approved statutory change by the General Assembly would require a three-fourths vote of all lawmakers, exempted only for approved statutory initiatives allowing for only a simple majority. Second, Amendment 68 includes the language of Amendment 67, and additionally seeks to reduce the minimum number of signatures required to propose an initiated statute from 5% to 4% of the votes cast in the previous election for secretary of state. Once again, the purpose is to protect the voice of citizens in the initiative process. Third, Amendment 69, as language is approved, would once again seek to protect the voice of citizens in the initiative process, doing so by maintaining Amendment 67’s standard for repealing or appealing an initiated statute but instead of reducing the minimum number of signatures required to proposed an initiated statute to 4% from its current 5% would instead seek to reduce this total percentage to 3%. All three Proposed Initiatives specify as to when the proposed thresholds would not apply. Full language of Proposed Initiatives and Title Action are appended.

### **SUMMARY OF ARGUMENT**

Each of the three proposed initiatives, when considered separately, contains one single subject. Further, each single subject has one distinct purpose and one clear effect. All three have been proposed to enhance protections for citizen-approved statutes. While each provides a slightly different language than the other two designed to achieving this purpose, they do not—either individually or collectively—violate the single subject requirement. In addition,

Proponents complied with C.R.S. §1-40-106(4), (d), which governs attendance at Board hearings. Finally, while Petitioner argues that titles, as set by Board “are misleading, do not fairly and correctly express the true meaning of the initiative, do not unambiguously state the principles of the provisions to be added to the constitution, and will lead to voter confusion,” Petitioner fails to present such arguments under the proper standard of review, which does not permit this Court to speculate about motives or objectives of Proponents, or as to outcomes should the Proposed Initiatives obtain sufficient voter approval. Most importantly, ballot titles for all three Proposed Initiatives are accurate.

## ARGUMENT

### **I. PROPOSED INITIATIVES DO NOT VIOLATE SINGLE SUBJECT REQUIREMENTS BECAUSE THEY EACH INDIVIDUALLY CONTAIN ONE DISTINCT PURPOSE AND ONE CLEAR EFFECT.**

#### **A. Standard of Review and Location in the Record**

The Court’s standard of review is limited. Board is vested with considerable discretion in setting the title, ballot title, submission clause and summary. In reviewing the Board’s actions, Court must liberally construe the single subject and title requirements for initiatives. *In re Matter of title, Ballot Title*, 917 P.2d 292 (Colo. 1996). Further, the Court’s review shall not include an analysis of the merits of the proposed initiatives, an interpretation as to the meaning of the language contained within each Proposed Initiative, or speculation as to how the initiatives could or should be applied once enacted. *In re Proposed Initiative Concerning “Auto. Ins. Coverage”*, 877 P.2d. 853, 856 (Colo. 1994). The purpose of the single subject requirement is to “prevent joining in the same act disconnected and incongruous measures.” *In re Ballot Title 1999-2000 #200A*, 992 P.2d 27, 30 (Colo. 2000). This Court’s review of a single subject challenge is limited to whether the initiative contains a single subject and whether the single-subject is clearly



expressed in the title. *Id.* Board's single subject determination is reflected in the final attached language, as appended to this brief.

**B. Proposed Initiatives each have one distinct purpose and one clear effect.**

Under Colorado law, any changes to state law proposed through a ballot initiative must be limited to a single subject and that subject must be clearly expressed in the initiative title. Colo. Const. Art. V, Sec. 1; C.R.S. §1-40-106.5(1)(a). To determine whether an initiative has violated the single-subject requirement, this Court shall first look first to the language of the proposed initiative. *In re Ballot Title 2005-2006 #75*, 138P.3d 267, 271 (Colo. 2006). Applying customary rules of statutory construction in its review of each proposed initiative as a whole, Court shall examine individual statements in context, rather than independent of one another. *Id.*; *In re Ballot Title 2009-2010 #45*, 234 P.3d 642, 646 (Colo. 2010). Therefore, this Court shall determine the purpose and effect of Proposed Initiatives from their respective plain language. Further, even if Court finds that the Proposed Initiatives "tend to carry out one general, broad objective or purpose," this conclusion shall not be enough to establish a violation of the single-subject requirement so long as the individual statements, when taken together, have the effect of one single purpose or objective. *In re Ballot Title 2009-2010 #45*, 234 P.3d at 646.

Here, Petitioners lack any basis for stating that the subject matter of the three initiatives, accepted by Board as "Citizen Initiative Process" addresses any other outside issue, topic or subject not directly related to initiative rights or procedures related to such rights.

**C. The subject matters included in Proposed Initiatives are connected.**

While Petitioner's motion to this Court seeks to reverse the Board's title, describing it as inaccurate and unfair because it "omitted any reference in title to, among other

things”...language that elaborates upon possible scenarios not addressed in language, as approved by Board. Still, so long as an initiative carries out a general purpose, its provisions are necessarily or adequately connected to each other, or alternatively, that its implementing provisions are directly tied to the initiative’s central focus, the Court shall not find that a single-subject requirement has occurred. *In re Proposed Ballot Initiative on Parental Rights*, 913 P.2d 1127, 1131 (Colo. 1996). *In re 1999-2000 #258(A)*, 4 P.3d at 1097.

While initiatives can and sometimes do result in multiple changes to state law or public agencies and entities, so long as such effects contribute to an initiative’s central focus, such as “instruction of all public school students using the English language,” in Proposed Initiative 1999-2000 #258(A), a single-subject violation has not occurred. “The mere fact that a constitutional amendment may affect” separate pre-existing governmental powers, this fact, when taken alone, does not signal a breach of the state’s single-subject requirement.

All three Proposed Initiatives provide boundaries to stated authority, such as under Amendment 67, when an exception is provided for statutes that “explicitly” provide that “the General Assembly may repeal or amend the statute or specific parts of the statute by a majority vote of the members of each house.” Appended to this Brief.

Petitioner contends in Petition to this Court that “the Board lacked jurisdiction to set a title because all three measures contain multiple subjects, including the new threshold requirements for any amendment or the repeal of an initiated statute (obtaining three-fourths approval of each house of the Colorado General Assembly or referring the matter to the voters) as well as the insulation of all initiated statutes (future, currently proposed, and previously adopted) from change except as provided by the Proposed initiative” . . . and that “two of the

three measures (#67 and #68) also contain the unrelated subject of reducing the number of required petition signatures as a condition for placing an initiated statute before the voters.”

Given the clear connection between the subject matter (“Citizen Initiative Process”) and the connection between the purpose and the effect of the initiative, this Court shall affirm the Board’s conclusion that Proposed Initiatives, individually and collectively, comply with the single subject requirement.

## **II. THE INITIATIVE BALLOT TITLES ARE NOT MISLEADING OR INACCURATE**

### **A. Standard of Review and Location in the Record:**

As previously referenced, this Court affords “great deference to the Title Board’s broad discretion in the exercise of its drafting authority.” *In re Proposed Initiative Concerning “State Personnel Sys.”*, 691 P.2d 1121, 1125 (Colo. 1984). Further, the Board’s determination may only be overturned in a “clear case” of unfair presentation of initiative title and language being submitted to the electorate. *In re Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 241 (Colo. 1990). This Court does not address the merits of a proposed measure, interpret the meaning of its language, or suggest how it could be applied if enacted. *In re “Auto Ins. Coverage”*, 877 P.2d at 856. In addition, the Board’s title and submission clauses are “presumptively valid” with the burden on Petitioner to “show wherein the assigned title does not meet the statutory requirement.” *Say v. Baker*, 322 P.2d. 317, 319 (Colo. 1958). This Court’s authority to overturn the Board is limited to only such circumstances while it can determine that titles, as set by Board “contain a material and significant omission, misstatement or misrepresentation.” *In re 1997-1998 #62*, P.2d at 1081.

**B. The ballot titles accurately present the intent and meaning of Proposed Initiatives.**

In spite of the standard of review, Petitioner requests that this Court speculate as to Proposed Initiatives' past, present, and future impacts, including the impact of alleged "insulation of all initiated statutes (future, currently proposed, and previously adopted)." The Board is "only obligated to fairly summarize the central points of a proposed measure, and need not refer to every effect, including but not limited to fiscal impact estimates, because "many variables affecting the [impacts] of a measure are unknown." *In re Proposed Initiative for a Petition on Campaign and Political Fin.*, 877 P.2d 311, 313 (Colo 1994). To demand that the Board include a comprehensive and exhaustive summary of every possible impact of a specific initiative would destroy the entire purpose of the Board, which is primarily to review, deny or approve titles so that they can concisely, correctly, and fairly express initiative intent and meaning. *In re 2009-2010 #45*, 234 P.3d at 648.

In sum, the Title Board accurately titled and described Proposed Initiatives, in accordance with its obligations and discretion to do so. Petitioner's speculation about impact on past, present or future law is outside the scope of review for this Court. Here, ballot titles have been accurately and lawfully set, and therefore, the Board's actions as to all three Proposed Initiatives should be affirmed.

**III. TITLE BOARD PROPERLY SET TITLES FOR PROPOSED INITIATIVES IN COMPLIANCE WITH PROPONENT ATTENDANCE MANDATES AS SET FORTH UNDER C.R.S. C.R.S.§1-40-106(4)(a)(d).**

**A. Standard for Review and Location in the Record:**

Petitioner maintains that Board erred in asserting jurisdiction to set title in conjunction with Proposed Initiatives because Proponents "undisputedly failed to comply with the statutory

mandate that both proponents must attend any Board proceeding at which the ballot measure and its ballot title are considered. C.R.S. § 1-40-106(4)a,(d).

This argument misstates C.R.S. §1-40-106(4)a, which requires only that Proponents or “each designated representative of the proponents shall appear at any title board meeting at which the designated representative’s ballot issue is considered.” Further, C.R.S. §1-40-106(4)d, the Board is only precluded from setting title upon non-attendance by Proponents or designated representatives at hearing where title is to be set.

**A. Proponents Attended All Required Meetings on Proposed Initiative Titles.**

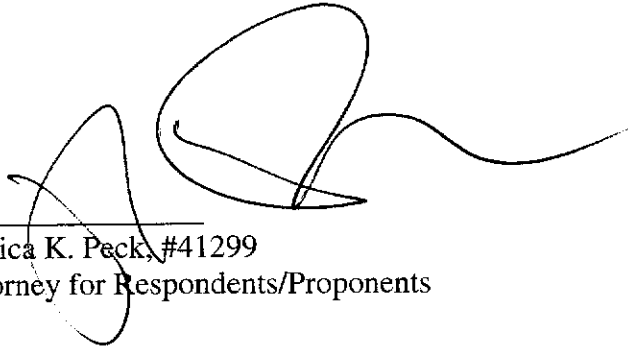
CR.S. §1-40-106(4)d does not require proponent attendance at hearings requested by challengers, where the purpose of such a procedural hearing is to determine whether Board will hold a substantive rehearing of challenger’s objections to title and/or language.

Here, the Board’s own interpretation of this requirement—such that Proponents were not required to attend the hearing for rehearing—was reasonable and should not be utilized as a technical trap for political opponents to eviscerate the rights of citizens to engage in the citizens’ initiative process. Petitioner’s motion for rehearing was properly denied and no actual rehearing on the merits of Proposed Initiatives ever occurred. Colorado’s ballot initiative system was designed by “the people [who reserved to themselves] the power to proposed laws and amends to the constitution and to eact or reject the same at the polls independent of the general assembly.” Colo. Const. Art V., Sec. 1. Therefore, Board’s actions shall rightfully stand.

**CONCLUSION**

For the foregoing reasons, Proponents respectfully request this Court affirm Title Board's approval of Proposed Amendments 67, 68, and 69.

Respectfully submitted May 15, 2012.



\_\_\_\_\_  
Jessica K. Peck, #41299  
Attorney for Respondents/Proponents

## CERTIFICATE OF SERVICE

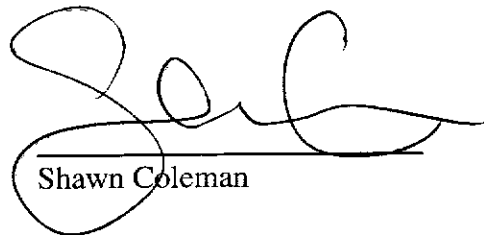
I hereby certify that on May 15, 2012, the original and ten copies of the foregoing OPENING BRIEF OF RESPONDENTS/PROPONENTS were filed with:

Clerk of the Colorado Supreme Court  
101 West Colfax Avenue, Suite 800  
Denver, Colorado 80202:

I further certify that true and correct copies of the foregoing OPEN BRIEF OF RESPONDENTS/PROPONENTS were served via hand courier upon the following:

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Colorado Secretary of State  
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Denver, Colorado 80290  
*Members of the Title Board*



Shawn Coleman

**RECEIVED**

**MAR 23 2012**

**ELECTIONS/LICENSING  
SECRETARY OF STATE**

12:30 P.M.

S. WARD

**"Voter Protection Act" - #67**

**As originally introduced . . .**

A new subsection (11) under Section 1 of Article V, of the Colorado Constitution:

Be it enacted by the people of the state of Colorado:

(11) The "Voter Protection Act."

(11.1) A statute enacted by citizen initiative pursuant to this article shall not be repealed or amended by the general assembly except by a three-fourths vote of the members of each house, unless such statute explicitly provides that the general assembly may repeal or amend it by a majority vote of the members of each house.

(11.2) The general assembly may by a majority vote of the members of each house place a repeal of a statute enacted by citizen initiative or an amendment or amendments to such a statute on the ballot for a vote of the people through a statewide referendum.

(11.3) This section shall apply prospectively to actions of the general assembly relating to statutes enacted by citizen initiative pursuant to this article, whether the initiative statute was enacted before or is enacted after the effective date of this section.



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MAR 23 2012

12:30 P.M.

ELECTIONS/LICENSING  
SECRETARY OF STATE  
S. WARD

"Your Vote Counts Act" - #67

Version showing changes in RED . . .

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

In the constitution of the state of Colorado, section 1 of article V, add (11), and amend section 22 of article V, as follows:

**"Section 1. General assembly - initiative and referendum.** (11) a) THIS MEASURE SHALL BE KNOWN AND MAY BE CITED AS THE "YOUR VOTE COUNTS ACT."

(b) A STATUTE ENACTED BY CITIZEN INITIATIVE PURSUANT TO THIS ARTICLE SHALL NOT BE REPEALED OR AMENDED BY THE GENERAL ASSEMBLY EXCEPT BY AT LEAST A THREE-FOURTHS VOTE OF THE MEMBERS OF EACH HOUSE, UNLESS SUCH STATUTE EXPLICITLY PROVIDES THAT THE GENERAL ASSEMBLY MAY REPEAL OR AMEND THE STATUTE OR SPECIFIC PARTS OF THE STATUTE BY A MAJORITY VOTE OF THE MEMBERS OF EACH HOUSE.

(c) THE GENERAL ASSEMBLY MAY BY A MAJORITY VOTE OF THE MEMBERS OF EACH HOUSE PLACE A REPEAL OF A STATUTE ENACTED BY CITIZEN INITIATIVE OR AN AMENDMENT OR AMENDMENTS TO SUCH A STATUTE ON THE BALLOT FOR A VOTE OF THE PEOPLE THROUGH A STATEWIDE REFERENDUM. IF A MAJORITY OF VOTERS CASTING BALLOTS ON THE SPECIFIC REFERENDUM VOTE IN FAVOR, THE REPEAL, AMENDMENT OR AMENDMENTS SHALL BE ENACTED.

(d) THIS SUBSECTION (11) SHALL APPLY PROSPECTIVELY TO ACTIONS OF THE GENERAL ASSEMBLY RELATING TO STATUTES ENACTED BY CITIZEN INITIATIVE PURSUANT TO THIS ARTICLE, WHETHER THE INITIATIVE STATUTE WAS ENACTED BEFORE OR IS ENACTED AFTER THE EFFECTIVE DATE OF THIS SECTION.

**"Section 22. Reading and Passage of Bills.** Every bill shall be read by title when introduced, and at length on two different days in each house; provided, however, any reading at length may be dispensed with upon unanimous consent of the members present. All substantial amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill, and no bill shall become a law except by a vote of the majority of all members elected to each house taken on two separate days in each house, EXCEPT AS SET FORTH IN SECTION 1 (11) OF ARTICLE V OF THIS CONSTITUTION, nor unless upon its final passage the vote be taken by ayes and noes and the names of those voting be entered on the journal.

RECEIVED

MAR 23 2012 12:30 P.M.

ELECTIONS/LICENSING  
SECRETARY OF STATE  
S. WARD

"Your Vote Counts Act" – 2011-2012 #67

Final version . . .

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

In the constitution of the state of Colorado, section 1 of article V, add (11), and amend section 22 of article V, as follows:

**"Section 1. General assembly - initiative and referendum.** (11) (a) THIS MEASURE SHALL BE KNOWN AND MAY BE CITED AS THE "YOUR VOTE COUNTS ACT."

(b) A STATUTE ENACTED BY CITIZEN INITIATIVE PURSUANT TO THIS ARTICLE SHALL NOT BE REPEALED OR AMENDED BY THE GENERAL ASSEMBLY EXCEPT BY AT LEAST A THREE-FOURTHS VOTE OF THE MEMBERS OF EACH HOUSE, UNLESS SUCH STATUTE EXPLICITLY PROVIDES THAT THE GENERAL ASSEMBLY MAY REPEAL OR AMEND THE STATUTE OR SPECIFIC PARTS OF THE STATUTE BY A MAJORITY VOTE OF THE MEMBERS OF EACH HOUSE.

(c) THE GENERAL ASSEMBLY MAY BY A MAJORITY VOTE OF THE MEMBERS OF EACH HOUSE PLACE A REPEAL OF A STATUTE ENACTED BY CITIZEN INITIATIVE OR AN AMENDMENT OR AMENDMENTS TO SUCH A STATUTE ON THE BALLOT FOR A VOTE OF THE PEOPLE THROUGH A STATEWIDE REFEREDNUM. IF A MAJORITY OF VOTERS CASTING BALLOTS ON THE SPECIFIC REFERENDUM VOTE IN FAVOR, THE REPEAL, AMENDMENT OR AMENDMENTS SHALL BE ENACTED.

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**"Section 22. Reading and Passage of Bills.** Every bill shall be read by title when introduced, and at length on two different days in each house; provided, however, any reading at length may be dispensed with upon unanimous consent of the members present. All substantial amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill, and no bill shall become a law except by a vote of the majority of all members elected to each house taken on two separate days in each house, EXCEPT AS SET FORTH IN SECTION 1 (11) OF ARTICLE V OF THIS CONSTITUTION, nor unless upon its final passage the vote be taken by ayes and noes and the names of those voting be entered on the journal.

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## BEFORE COLORADO STATE TITLE SETTING BOARD

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In re Ballot Title and Submission Clause for 2011-2012 Initiatives #67, 68, and 69 ("Citizen Initiative Process")

PHILIP HAYES, Objector

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### MOTION FOR REHEARING

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Pursuant to C.R.S. § 1-40-107, Objector, Philip Hayes, a registered elector of the State of Colorado, by and through his legal counsel, Heizer Paul Grueskin L.L.P. is not satisfied with the April 4, 2012 decisions of the Title Board that Initiatives # 67, 68, and 69 comprise a single subject and further that the titles for these proposed ballot measures are fair and that they accurately express the meaning and intent of said measures.

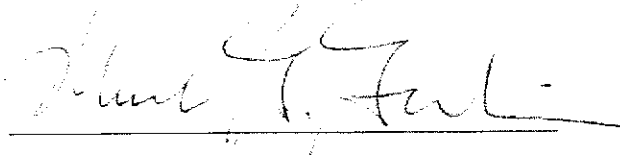
- I. These ballot measures violate the single subject requirement, Colo. Const., art. V, § 1(5.5), including but not limited to the multiple topics of:
  - A. Imposing a constraint on legislative power by creating super-majority requirements for effecting amendments and/or repeals of initiated statutes enacted in the future. Proposed Colo. Const., art. V, sec. 11(1)(d).
  - B. Imposing this limitation on legislative power as to initiated statutes that are enacted at the 2012 election, even where, individually or as a group, they contain multiple, unrelated subjects. *Id.*
  - C. Imposing this limitation on legislative power as to initiated statutes that were enacted at previous elections, even though, individually and as a group, they contained multiple, unrelated subjects. *Id.*; *In re Ballot Title and Submission Clause for Initiative 2001-02 #43*, 46 P.3d 438, 445-48 (Colo. 2002).
  - D. As to #68 and #69, in addition to the above subjects, changing percentages of electors' signatures required for an initiated statute (3% and 4% respectively). *Id.* at 443-444 (petition procedures is a separate subject.)
- II. The Title Board did not provide a fair or accurate ballot title because it omitted any reference in the title to, among other things:
  - A. Any legislative repeal or amendment must be by "at least" three-fourths of each house of the general assembly.

- B. The vote taken to refer a measure to the voters must be by a majority of each house of the general assembly.
- C. A referred measure passes when a majority of voters casting ballots agree to the amendment or repeal.
- D. The fact that the measure applies to actions of the general assembly in connection with already enacted initiated statutes, as well as initiated statutes considered at the 2012 election and future initiated statutes.

Please set this matter for rehearing, pursuant to C.R.S. § 1-40-107(1).

Respectfully submitted this 11<sup>th</sup> day of April, 2012.

HEIZER PAUL GRUESKIN LLP



Mark G. Grueskin

Objector's address:

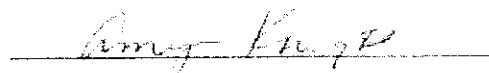
Philip Hayes, 5464 South Ward Way, Littleton CO 80127

#### CERTIFICATE OF SERVICE

A true and accurate copy of this MOTION FOR REHEARING was sent to the designated representatives, by means of U.S. Mail, first class, postage prepaid:

David Ortke, 3308 S. Hannibal Street, Aurora, CO 80013

John Slota, 2990 Shadow Creek Drive, #108, Boulder, CO 80303



RECEIVED

MAR 23 2012

12:30 P.M.

S. WARD

ELECTIONS LICENSING  
SECRETARY OF STATE

"Voter Protection Act" – #68

As originally introduced . . .

Revisions to Section 1 of Article V, of the Colorado Constitution:

Be it enacted by the people of the state of Colorado:

The "Voter Protection Act."

An amendment to Article V, Section 1, changing subsection (2) and adding a new subsection (11), is enacted to read as follows:

Art. V, Section 1. Subsection (2) The first power hereby reserved by the people is the initiative, and signatures by registered electors in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of secretary of state at the previous general election shall be required to propose ~~any measure~~ a constitutional amendment by petition and at least four percent to propose legislation by petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions for state legislation and amendments to the constitution, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state at least three months before the general election at which they are to be voted upon.

Subsection 11. (a) This section shall be known and may be cited as the "Voter Protection Act."

(b) A statute enacted by citizen initiative pursuant to this article shall not be repealed or amended by the general assembly, except by either a three-fourths vote of the members of each house, unless such statute explicitly provides that the general assembly may repeal or amend it by a majority vote of the members of each house.

(c) The general assembly may by a majority vote of the members of each house place a repeal of a statute enacted by citizen initiative or an amendment or amendments to such a statute on the ballot for a vote of the people through a statewide referendum.

(d) This section shall apply prospectively to actions of the general assembly relating to statutes enacted by citizen initiative pursuant to this article, whether the initiative statute was enacted before or is enacted after the effective date of this section.

RECEIVED

MAR 23 2012

12:30 P.M.

ELECTIONS/LICENSING  
SECRETARY OF STATE

S. WARD

"Your Vote Counts Act" - #68  
Version showing changes in RED . . .

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

In the constitution of the state of Colorado, section 1 of article V, amend (2); add (11), and amend section 22 of article V, as follows:

**"Section 1. General assembly - initiative and referendum. (2)** The first power hereby reserved by the people is the initiative, and signatures by registered electors in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of secretary of state at the previous general election shall be required to propose ~~any measure~~ A CONSTITUTIONAL AMENDMENT by petition AND AT LEAST FOUR PERCENT TO PROPOSE LEGISLATION BY PETITION, and every such petition shall include the full text of the measure so proposed. Initiative petitions for state legislation and amendments to the constitution, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state at least three months before the general election at which they are to be voted upon.

(11) (a) THIS MEASURE SHALL BE KNOWN AND MAY BE CITED AS THE "YOUR VOTE COUNTS ACT."

(b) A STATUTE ENACTED BY CITIZEN INITIATIVE PURSUANT TO THIS ARTICLE SHALL NOT BE REPEALED OR AMENDED BY THE GENERAL ASSEMBLY, EXCEPT BY EITHER AT LEAST A THREE-FOURTHS VOTE OF THE MEMBERS OF EACH HOUSE, UNLESS SUCH STATUTE EXPLICITLY PROVIDES THAT THE GENERAL ASSEMBLY MAY REPEAL OR AMEND ~~IT~~ THE STATUTE OR SPECIFIC PARTS OF THE STATUTE BY A MAJORITY VOTE OF THE MEMBERS OF EACH HOUSE.

(c) THE GENERAL ASSEMBLY MAY BY A MAJORITY VOTE OF THE MEMBERS OF EACH HOUSE PLACE A REPEAL OF A STATUTE ENACTED BY CITIZEN INITIATIVE OR AN AMENDMENT OR AMENDMENTS TO SUCH A STATUTE ON THE BALLOT FOR A VOTE OF THE PEOPLE THROUGH A STATEWIDE REFEREDNUM. IF A MAJORITY OF VOTERS CASTING BALLOTS ON THE SPECIFIC REFERENDUM VOTE IN FAVOR, THE REPEAL AMENDMENT OR AMENDMENTS SHALL BE ENACTED

(d) THIS ~~SECTION~~ SUBSECTION (11) SHALL APPLY PROSPECTIVELY TO ACTIONS OF THE GENERAL ASSEMBLY RELATING TO STATUTES ENACTED BY CITIZEN INITIATIVE PURSUANT TO THIS ARTICLE, WHETHER THE INITIATIVE STATUTE WAS ENACTED BEFORE OR IS ENACTED AFTER THE EFFECTIVE DATE OF THIS SECTION.

**"Section 22. Reading and Passage of Bills.** Every bill shall be read by title when introduced, and at length on two different days in each house; provided, however, any reading at length may be dispensed with upon unanimous consent of the members present. All substantial amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill, and no bill shall become a law except by a vote of the majority of all members elected to each house taken on two separate days in each house, EXCEPT AS SET FORTH IN SECTION 1 (11) OF ARTICLE V OF THIS CONSTITUTION, nor unless upon its final passage the vote be taken by ayes and noes and the names of those voting be entered on the journal.

RECEIVED

MAR 23 2012 12:30 P.M.

ELECTIONS/LICENSING  
SECRETARY OF STATE S.WARD

"Your Vote Counts Act" 2011-2012 #68

Final version . . .

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

In the constitution of the state of Colorado, section 1 of article V, amend (2); add (11), and amend section 22 of article V, as follows:

"Section 1. General assembly - initiative and referendum. (2) The first power hereby reserved by the people is the initiative, and signatures by registered electors in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of secretary of state at the previous general election shall be required to propose ~~any measure~~ A CONSTITUTIONAL AMENDMENT by petition AND AT LEAST FOUR PERCENT TO PROPOSE LEGISLATION BY PETITION, and every such petition shall include the full text of the measure so proposed. Initiative petitions for state legislation and amendments to the constitution, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state at least three months before the general election at which they are to be voted upon.

(11) (a) THIS MEASURE SHALL BE KNOWN AND MAY BE CITED AS THE "YOUR VOTE COUNTS ACT."

(b) A STATUTE ENACTED BY CITIZEN INITIATIVE PURSUANT TO THIS ARTICLE SHALL NOT BE REPEALED OR AMENDED BY THE GENERAL ASSEMBLY EXCEPT BY AT LEAST A THREE-FOURTHS VOTE OF THE MEMBERS OF EACH HOUSE, UNLESS SUCH STATUTE EXPLICITLY PROVIDES THAT THE GENERAL ASSEMBLY MAY REPEAL OR AMEND THE STATUTE OR SPECIFIC PARTS OF THE STATUTE BY A MAJORITY VOTE OF THE MEMBERS OF EACH HOUSE.

(c) THE GENERAL ASSEMBLY MAY BY A MAJORITY VOTE OF THE MEMBERS OF EACH HOUSE PLACE A REPEAL OF A STATUTE ENACTED BY CITIZEN INITIATIVE OR AN AMENDMENT OR AMENDMENTS TO SUCH A STATUTE ON THE BALLOT FOR A VOTE OF THE PEOPLE THROUGH A STATEWIDE REFEREDNUM. IF A MAJORITY OF VOTERS CASTING BALLOTS ON THE SPECIFIC REFERENDUM VOTE IN FAVOR, THE REPEAL, AMENDMENT OR AMENDMENTS SHALL BE ENACTED.

(d) THIS SUBSECTION (11) SHALL APPLY PROSPECTIVELY TO ACTIONS OF THE GENERAL ASSEMBLY RELATING TO STATUTES ENACTED BY CITIZEN INITIATIVE PURSUANT TO THIS ARTICLE, WHETHER THE INITIATIVE STATUTE WAS ENACTED BEFORE OR IS ENACTED AFTER THE EFFECTIVE DATE OF THIS SECTION.

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David Ottke  
3308 S. Hannibal St.  
Aurora CO 80013  
303-552-7236  
Dottke@gmail.com

John Slota  
2990 Shadow Creed Dr., #10  
Boulder, CO 80303  
303-638-2979  
John.slota@gmail.com

## BEFORE COLORADO STATE TITLE SETTING BOARD

---

In re Ballot Title and Submission Clause for 2011-2012 Initiatives #67, 68, and 69 ("Citizen Initiative Process")

PHILIP HAYES, Objector

---

### MOTION FOR REHEARING

---

Pursuant to C.R.S. § 1-40-107, Objector, Philip Hayes, a registered elector of the State of Colorado, by and through his legal counsel, Heizer Paul Grueskin LLP, is not satisfied with the April 4, 2012 decisions of the Title Board that Initiatives # 67, 68, and 69 comprise a single subject and further that the titles for these proposed ballot measures are fair and that they accurately express the meaning and intent of said measures.

- I. These ballot measures violate the single subject requirement. Colo. Const., art. V, § 1(5.5), including but not limited to the multiple topics of:
  - A. Imposing a constraint on legislative power by creating super-majority requirements for effecting amendments and/or repeals of initiated statutes enacted in the future. Proposed Colo. Const., art. V, sec. 11(1)(d).
  - B. Imposing this limitation on legislative power as to initiated statutes that are enacted at the 2012 election, even where, individually or as a group, they contain multiple, unrelated subjects. *Id.*
  - C. Imposing this limitation on legislative power as to initiated statutes that were enacted at previous elections, even though, individually and as a group, they contained multiple, unrelated subjects. *Id.*; *In re Ballot Title and Submission Clause for Initiative 2001-02 #43*, 46 P.3d 438, 445-48 (Colo. 2002).
  - D. As to #68 and #69, in addition to the above subjects, changing percentages of electors' signatures required for an initiated statute (3% and 4% respectively). *Id.* at 443-444 (petition procedures is a separate subject.)
- II. The Title Board did not provide a fair or accurate ballot title because it omitted any reference in the title to, among other things:
  - A. Any legislative repeal or amendment must be by "at least" three-fourths of each house of the general assembly.

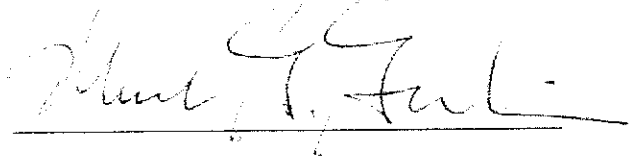


- B. The vote taken to refer a measure to the voters must be by a majority of each house of the general assembly.
- C. A referred measure passes when a majority of voters casting ballots agree to the amendment or repeal.
- D. The fact that the measure applies to actions of the general assembly in connection with already enacted initiated statutes, as well as initiated statutes considered at the 2012 election and future initiated statutes.

Please set this matter for rehearing, pursuant to C.R.S. § 1-40-107(1).

Respectfully submitted this 11<sup>th</sup> day of April, 2012.

HEIZER PAUL GRUESKIN LLP



Mark G. Grueskin

Objector's address:

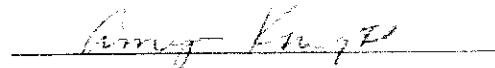
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S. WARD

ELECTIONS/LICENSING  
SECRETARY OF STATE

**"Voter Protection Act" – #69**

**As originally introduced . . .**

Revisions to Section 1 of Article V, of the Colorado Constitution:

Be it enacted by the people of the state of Colorado:

The "Voter Protection Act."

An amendment to Article V, Section 1, changing subsection (2) and adding a new subsection (11), is enacted to read as follows:

Art. V, Section 1. Subsection (2) The first power hereby reserved by the people is the initiative, and signatures by registered electors in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of secretary of state at the previous general election shall be required to propose ~~any measure~~ a constitutional amendment by petition and at least three percent to propose legislation by petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions for state legislation and amendments to the constitution, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state at least three months before the general election at which they are to be voted upon.

Subsection 11. (a) This section shall be known and may be cited as the "Voter Protection Act."

(b) A statute enacted by citizen initiative pursuant to this article shall not be repealed or amended by the general assembly, except by either a three-fourths vote of the members of each house, unless such statute explicitly provides that the general assembly may repeal or amend it by a majority vote of the members of each house.

(c) The general assembly may by a majority vote of the members of each house place a repeal of a statute enacted by citizen initiative or an amendment or amendments to such a statute on the ballot for a vote of the people through a statewide referendum.

(d) This section shall apply prospectively to actions of the general assembly relating to statutes enacted by citizen initiative pursuant to this article, whether the initiative statute was enacted before or is enacted after the effective date of this section.

RECEIVED

MAR 23 2012

12:30 P.M.

SWARD

ELECTIONS/LICENSING  
SECRETARY OF STATE

"Your Vote Counts Act" - #69  
Version showing changes in RED . . .

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

In the constitution of the state of Colorado, section 1 of article V, amend (2); add (11), and amend section 22 of article V, as follows:

**"Section 1. General assembly - initiative and referendum.** (2) The first power hereby reserved by the people is the initiative, and signatures by registered electors in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of secretary of state at the previous general election shall be required to propose ~~any measure~~ A CONSTITUTIONAL AMENDMENT by petition AND AT LEAST THREE PERCENT TO PROPOSE LEGISLATION BY PETITION, and every such petition shall include the full text of the measure so proposed. Initiative petitions for state legislation and amendments to the constitution, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state at least three months before the general election at which they are to be voted upon.

(11) (a) THIS MEASURE SHALL BE KNOWN AND MAY BE CITED AS THE "YOUR VOTE COUNTS ACT."

(b) A STATUTE ENACTED BY CITIZEN INITIATIVE PURSUANT TO THIS ARTICLE SHALL NOT BE REPEALED OR AMENDED BY THE GENERAL ASSEMBLY, EXCEPT BY EITHER AT LEAST A THREE-FOURTHS VOTE OF THE MEMBERS OF EACH HOUSE, UNLESS SUCH STATUTE EXPLICITLY PROVIDES THAT THE GENERAL ASSEMBLY MAY REPEAL OR AMEND ~~IF~~ THE STATUTE OR SPECIFIC PARTS OF THE STATUTE BY A MAJORITY VOTE OF THE MEMBERS OF EACH HOUSE.

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**RECEIVED**

"Your Vote Counts Act" 2011-2012 #69

MAR 23 2012 12:30 P.M.

Final version . . .

ELECTIONS/LICENSING  
SECRETARY OF STATE  
S.WARD

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John.slota@gmail.com

## BEFORE COLORADO STATE TITLE SETTING BOARD

---

In re Ballot Title and Submission Clause for 2011-2012 Initiatives #67, 68, and 69 ("Citizen Initiative Process")

PHILIP HAYES, Objector

---

### MOTION FOR REHEARING

---

Pursuant to C.R.S. § 1-40-107, Objector, Philip Hayes, a registered elector of the State of Colorado, by and through his legal counsel, Heizer Paul Grueskin I.L.P. is not satisfied with the April 4, 2012 decisions of the Title Board that Initiatives # 67, 68, and 69 comprise a single subject and further that the titles for these proposed ballot measures are fair and that they accurately express the meaning and intent of said measures.

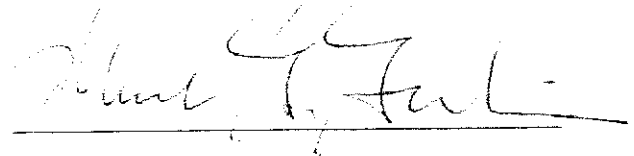
- I. These ballot measures violate the single subject requirement, Colo. Const., art. V, § 1(5.5), including but not limited to the multiple topics of:
  - A. Imposing a constraint on legislative power by creating super-majority requirements for effecting amendments and/or repeals of initiated statutes enacted in the future. Proposed Colo. Const., art. V, sec. 11(1)(d).
  - B. Imposing this limitation on legislative power as to initiated statutes that are enacted at the 2012 election, even where, individually or as a group, they contain multiple, unrelated subjects. *Id.*
  - C. Imposing this limitation on legislative power as to initiated statutes that were enacted at previous elections, even though, individually and as a group, they contained multiple, unrelated subjects. *Id.*; *In re Ballot Title and Submission Clause for Initiative 2001-02 #43*, 46 P.3d 438, 445-48 (Colo. 2002).
  - D. As to #68 and #69, in addition to the above subjects, changing percentages of electors' signatures required for an initiated statute (3% and 4% respectively). *Id.* at 443-444 (petition procedures is a separate subject.)
  
- II. The Title Board did not provide a fair or accurate ballot title because it omitted any reference in the title to, among other things:
  - A. Any legislative repeal or amendment must be by "at least" three-fourths of each house of the general assembly.

- B. The vote taken to refer a measure to the voters must be by a majority of each house of the general assembly.
- C. A referred measure passes when a majority of voters casting ballots agree to the amendment or repeal.
- D. The fact that the measure applies to actions of the general assembly in connection with already enacted initiated statutes, as well as initiated statutes considered at the 2012 election and future initiated statutes.

Please set this matter for rehearing, pursuant to C.R.S. § 1-40-107(1).

Respectfully submitted this 11<sup>th</sup> day of April, 2012.

HEIZER PAUL GRUESKIN LLP



Mark G. Grueskin

Objector's address:

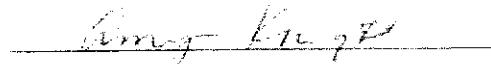
Philip Hayes, 5464 South Ward Way, Littleton CO 80127

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A true and accurate copy of this MOTION FOR REHEARING was sent to the designated representatives, by means of U.S. Mail, first class, postage prepaid:

David Ottke, 3308 S. Hannibal Street, Aurora, CO 80013

John Slota, 2990 Shadow Creek Drive, #108, Boulder, CO 80303



SUPREME COURT OF COLORADO  
101 West Colfax Avenue, Suite 800  
Denver, Colorado 80203

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 Initiatives 2011-  
2012 #67, #68, #69 ("Citizen Initiative Process")

**Petitioner: PHILIP HAYES**

v.

**Respondents: DAVID OTTKE and JOHN  
SLOTA**

and

**Title Board: SUZANNE STAIERT; DANIEL  
DOMENICO; and SHARON EUBANKS**

Attorneys for Petitioner:

Mark G. Grueskin, #14621  
Heizer Paul Grueskin LLP  
2401 15<sup>th</sup> Street, Suite 300  
Denver, CO 80202  
Telephone: 303-376-3703 (direct)  
Telephone: 303-595-4747  
Facsimile: 303-595-4750  
Email: mgrueskin@hpgfirm.com

FILED IN THE  
SUPREME COURT.

APR 25 2012

OF THE STATE OF COLORADO  
Christopher T. Ryan, Clerk

▲ COURT USE ONLY ▲

Case No.

125A117

**PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE  
SETTING BOARD CONCERNING PROPOSED INITIATIVES 2011-2012  
#67, #68, AND #69 ("CITIZEN INITIATIVE PROCESS")**

## **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 a Motion for Rehearing with the Title Board that addressed all three Proposed Initiatives. 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 (1), (2).

As required by C.R.S. §1-40-107(2), attached to this Petition for Review are certified copies of: (1) the final initiatives filed by the Proponents; (2) the titles and the submission clauses set by the Title Board; (3) the Motion for Rehearing filed by the Petitioner; and (4) the Board's rulings on the Motion for Rehearing.

Petitioner is not satisfied with the Title Board's ruling on the Motion for Rehearing. As such, this matter is properly before the Colorado Supreme Court.

### **GROUND FOR APPEAL**

In violation of Colo. Const., art. V, § 1(5.5) and C.R.S. § 1-40-106.5, the measure violates the single subject requirement. In addition, both Proponents failed to attend the rehearing at which their measures were considered, as they are required to do by Colorado law. § 1-40-106(4)(a), (d). Finally, the titles set by the Board are misleading, do not fairly and correctly express the true meaning of the initiative, do not unambiguously state the principles of the provisions to be added



to the Constitution, and will lead to voter confusion. The following is an advisory list of issues to be addressed in Petitioner's brief:

1. The Board erred in asserting jurisdiction to set a title in connection with the Proposed Initiative because the Proponents undisputedly failed to comply with the statutory mandate that both proponents must attend any Board proceeding at which the ballot measure and its ballot title are considered. C.R.S. § 1-40-106(4)(a), (d).
2. The Board lacked jurisdiction to set a title because all three measures contain multiple subjects, including the new threshold requirements for any amendment or the repeal of an initiated statute (obtaining three-fourths approval of each house of the Colorado General Assembly or referring the matter to the voters) as well as the insulation of all initiated statutes (future, currently proposed, and previously adopted) from change except as provided by the Proposed Initiative, even though such previously adopted initiated statutes deal with a myriad of unrelated subjects. In addition, two of the three measures (#67 and #68) also contain the unrelated subject of reducing the number of required petition signatures as a condition for placing an initiated statute before the voters (3% and 4%, respectively, which is a change from the existing 5%).

3. The Board erred by setting confusing titles that fail to inform voters about the applicability of the new restraints on legislative authority to all previously adopted initiated statutes.

### **PRAYER FOR RELIEF**

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the Proponents failed to comply with the statute requiring them both to attend the rehearing, that the Proposed Initiative comprises multiple subjects, and that the titles for all such measures are neither fair nor accurate. As such, the actions of the Board are invalid, and the Proponents are prohibited from proceeding with these measures until such time as they correct the jurisdictional and title wording issues presented in this appeal.

Respectfully submitted this 25th day of April, 2012.



Mark G. Grueskin, #14621  
Heizer Paul Grueskin LLP  
2401 15<sup>th</sup> Street, Suite 300  
Denver, CO 80202  
Telephone: 303-376-3703  
Facsimile: 303-595-4750  
Email: mgrueskin@hpgfirm.com  
**ATTORNEYS FOR PETITIONER**

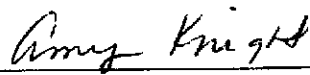
**CERTIFICATE OF SERVICE**

I hereby certify that on the 25<sup>th</sup> day of April, 2012, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVES 2011-2012 #67, #68, AND #69 ("CITIZEN INITIATIVE PROCESS)** was served via U.S. mail, postage prepaid, to the following:

David Ottke  
3308 S. Hannibal Street  
Aurora, CO 80013

John Slota  
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