

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 15th Street, Suite 300
Denver, CO 80202
Telephone: 303-376-3703 (direct)
Telephone: 303-595-4747
Facsimile: 303-595-4750
Email: mgrueskin@hpgfirm.com

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SUPREME COURT

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OF THE STATE OF COLORADO
Christopher T. Ryan, Clerk

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Case No. 2012 SA 117

PETITIONER'S OPENING BRIEF

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 3,915 words.

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STATEMENT OF ISSUES PRESENTED

Whether the Title Board erred by conducting the rehearing on the titles it set earlier for Initiatives 2011-2012 #67, #68, and #69 when only one of the two designated representatives attended the rehearing, contrary to the 2011 statutory amendment, requiring that "each designated representative of the proponents shall appear at any title board meeting" at which their measure "is considered."

Whether the Title Board erred in finding that Initiatives 2011-2012 #67, #68, and #69 each comprised a single subject when all of them make changes in the way the legislature may amend or repeal initiated statutes and also, by their express terms, retroactively limit legislative reconsideration of any initiated statute ever adopted (the first such statute being adopted in 1912) – a surreptitious change as to many different laws.

Whether the Title Board erred by failing to inform voters in the ballot titles set that Initiatives 2011-2012 #67, #68, and #69 are expressly retroactive in nature.

SUMMARY OF THE ARGUMENT

In 2011, the Colorado General Assembly amended the Title Board's authorizing statute to require that both designated representatives appear at any Title Board meeting at which their proposal is considered. The statute is explicit in this regard, and it allows designated representatives to have their measure

considered at the next meeting of the Title Board if they are not both able to attend. Likewise, the Secretary's guidance allows designated representatives to be replaced for any reason. However, here, the Title Board considered Philip Hayes' motion for rehearing even though one of the two designated proponents, John Slota, was not at the meeting of the Board. This was error.

Similarly, the Title Board erred by finding that these measures comprise a single subject. These three initiatives all change the rules by which an initiated statute can be repealed or even amended. By their express terms, all three proposals apply retroactively to all initiated statutes adopted by voters since this right of initiative was first exercised in 1912. The subjects that are addressed by those initiated statutes varies widely, and by requiring a $\frac{3}{4}$ majority in each house of the General Assembly just to amend one of these statutes or requiring that the voters themselves enact the amendment or repeal is to, in essence, give initiated statutes status that no other existing statute possesses. The retroactive application of these measures to a host of unrelated statutes violates this Court's clear guidance on what is and is not a single subject. The Title Board thus erred in this regard as well.

If the Board had jurisdiction to act despite the issues addressed above, the Board should have at least referred in these ballot titles to the provisions that made

these proposals retroactive. This type of change certainly deserves to be discussed in the ballot titles so that voters can reason that a "yes" vote means that all initiated statutes adopted at previous elections, are withdrawn from the normal legislative process. Whatever views one takes of issues like gun control, campaign finance, or the eight-hour workday, voters should at least know that they are insulating all such statutes from any normal legislative process. This may be a plus for certain voters on certain issues, and it may be a minus for others on those same issues. (And it may be a positive and negative aspect of the measures for the same voter, depending on his or her view of the array of initiated statutes adopted over the last century.) But it should certainly be mentioned in the title, and the Title Board erred by refusing to do so.

STATEMENT OF THE CASE

I. Nature of the Case, Course of Proceedings, and Disposition Below

The designated representatives filed their proposed initiatives with the Office of Legislative Council, went through a review and comment hearing before legislative staff, submitted final drafts of the three initiatives to the Title Board, (attached as **Exhibit A** hereto), and attended the hearings before the Title Board to set ballot titles. At that time, the Board set titles for all three measures. After a motion for rehearing was filed as to all three measures at issue in this case

(attached as **Exhibit B** hereto), only one designated representative, Mr. Ottke, attended the rehearing before the Board. At the rehearing, objections to the Board's jurisdiction relating to the failure of both designated representatives to attend that meeting and to the single subject of the three measures were addressed. In addition, objection to the failure of the titles to reference the retroactive nature of the measures was also made. (Attached as **Exhibit C** hereto).

The Title Board denied all the above-stated jurisdictional objections and slightly modified the titles set. This appeal followed.

II. Statement of the Facts

The final versions of Initiatives 2011-2012 #67, #68, and #69 all address the issue of initiated statutes. All three provide that initiated statutes can only be amended or repealed if three-quarters of each house of the General Assembly agrees to do so or the amendment or repeal of the initiated statute is referred to the voters, and the voters agree with the proposed change. (Under these measures, an initiated statute could provide for amendment or repeal by majority vote of the legislature but would need to do so explicitly.) These measures would apply prospectively but, even so, they would also control any legislative effort to amend or repeal an initiated statute, regardless of whether it "was enacted before or is enacted after the effective date of this section." Thus, this change in legislative

plenary authority is retroactive. This issue was raised in the Objector's Motion for Rehearing. Motion for Rehearing at 1 (¶I.B., C.).

Initiatives #68 and #69 also broach a third subject, namely a change in the qualification of proposed initiated statutes for the ballot. #68 lowers the existing constitutional threshold to 4% of votes at the last election for secretary of state, and #69 lowers that threshold to 3% of such voters. These changes represent an additional subject in these two measures. *See* Motion for Rehearing at 1 (¶I.D.).

The Title Board set titles for these three measures, and those ballot titles are entirely silent on the retroactivity issue.

LEGAL ARGUMENT

I. The Title Board did not have jurisdiction to act at the rehearing, as the designated representatives failed to be present as required by law.

A. Standard of Review and Pertinent Record Citations.

The issue of the Title Board's jurisdiction is purely a question of law to be addressed de novo by this Court, and the proponents' satisfaction of mandated title-related processes is not limited to the single subject requirement that is addressed separately in this Brief. *See, e.g., In re Title, Ballot Title and Submission Clause, and Summary of Initiative 1997-98 #109*, 962 P.2d 252 (Colo. 1998) (Title Board properly refused to set ballot title where designated

representatives failed to submit correct drafts of original, amended, and final initiative to Title Board).

This issue was raised at the rehearing when it became apparent that only one designated representative was attending the rehearing. The objection was raised at the Title Board rehearing. (Transcript of Title Board hearing of April 19, 2012) (Attached as **Exhibit D** hereto at 4:16-23).

- B. One of the required designated representatives of #67, #68, and #69 failed to appear for the rehearing before the Board, depriving the Board of jurisdiction to act at that meeting.

In 2011, Colorado statute was amended to require that designated representatives of an initiative be present at every Title Board meeting at which their measure is considered. Specifically, the statute, C.R.S. § 1-40-107(4), as amended states:

(a) Each designated representative of the proponents shall appear at any title board meeting at which the designated representative's ballot issue is considered.

(b) Each designated representative of the proponents shall certify by a notarized affidavit that the designated representative is familiar with the provisions of this article, including but not limited to the prohibition on circulators' use of false addresses in completing circulator affidavits and the summary prepared by the secretary of state pursuant to paragraph (c) of this subsection (4). The affidavit shall include a physical address at which process may be served on the designated representative. The designated representative shall sign and file the affidavit with the secretary of state at the first title board

meeting at which the designated representative's ballot issue is considered.

(c) The secretary of state shall prepare a summary of the designated representatives of the proponents' responsibilities that are set forth in this article.

(d) The title board shall not set a title for a ballot issue if either designated representative of the proponents fails to appear at a title board meeting or file the affidavit as required by paragraphs (a) and (b) of this subsection (4). The title board may consider the ballot issue at its next meeting, but the requirements of this subsection (4) shall continue to apply.

(Emphasis added.)

Requiring designated representatives to explain their measure and assist the Title Board is hardly onerous. They need to attend the Board meeting at which the title is first set and a rehearing on the title if a motion for rehearing is filed with the Title Board. Should a designated representative be unable to attend one of these meetings, their measure is not eliminated from the process. "The title board may consider the ballot issue at its next meeting." *Id.* Alternatively, under the Secretary of State's guidelines, the designated representatives may substitute another person for the individual who is unable to attend and proceed with the scheduled meeting of the Board. (Attached as **Exhibit E** hereto.)

That this requirement applies to a rehearing is apparent from the plain wording of the statute that requires that designated representatives appear "at any

title board meeting at which the designated representative's ballot issue is considered." The term "any" is all-inclusive and allows for no implied exceptions. *Colo. Educ. Ass'n v. Rutt*, 184 P.3d 65, 75 (Colo. 2008) (the phrase, "any" communication, "is broad and all-inclusive" and Court is "not free to imply limitations or qualifications that are not found" in text); *see also Colo. State Bd. of Accountancy v. Zaveral Boosalis Raisch*, 960 P.2d 102, 106-07 (Colo. 1998) (same interpretation of "any"). And C.R.S. § 1-40-107(4) uses the phrase "any title board meeting" to describe the session of the Board at which the attendance of both designated representatives is required. The statutes that describe the initial hearing on a ballot title and the rehearing also use "meeting" to describe those sessions of the board. C.R.S. §§ 1-40-106(1), -107(1). Had the presence of the two designated representatives only been required at the initial hearing, reference to C.R.S. § 1-40-106(1) or that initial process could have been used to limit the reach of this provision.

Additionally, the Secretary of State, required by law to prepare a summary of designated representative responsibilities, has made it clear that this is a mandatory obligation of the two listed proponents. As he states in the aforementioned summary, the designated representatives "must appear at any Title Board meeting during which the designated representatives' proposed initiative is

to be heard.” (See **Exhibit E.**) It is noteworthy that the statute requires attendance at any Board meeting at which the “ballot issue is considered” and the Secretary’s instructions require attendance at any Title Board meeting where the measure “is to be heard.” All quoted language is clearly broad enough to encompass a title rehearing.

Paramount in the Board’s fulfillment of its statutory duty is its ability to understand the measure as drafted and as intended by those who drafted it. *In re Title, Ballot Title and Submission Clause, and Summary of Initiative 1999-2000* #25, 974 P.2d 458, 465 (Colo. 1999). If the Board cannot truly understand the proposal, it is legally prevented from setting a ballot title. *Id.* at 467-68. To the extent that the legislature has determined that the presence of both proponents at all Title Board hearings at which their measure is considered will facilitate that understanding, the Board cannot ignore this requirement by holding the rehearing without both of them in attendance.

Here, there is no dispute that only one proponent, David Attke, was present at the rehearing. There is also no dispute that the other proponent, John Slota, was absent. Consideration of a motion for rehearing is part and parcel of the ballot title setting process. *Armstrong v. Davidson*, 10 P.3d 1278, 1283 (Colo. 2000) (“the fixing and determining of titles and summary is not final until the Title Board has

denied the petition for rehearing”). Yet, the Board had no authority, under C.R.S. § 1-40-107(4)(d), to undertake this part of the title setting process unless Mr. Slota attended the rehearing. As such, the Title Board erred by allowing the rehearing to take place and should have deferred it to “its next meeting.” *Id.*

II. Single Subject Violation

A. Standard of Review and Pertinent Record Citations.

This Court will analyze whether a measure complies with the constitutional single subject requirement by engaging in a *de novo* review of the proposed measure. A petition comprises multiple subjects if its text relates to more than one subject and has at least two distinct and separate purposes which are not dependent upon or connected with each other. That review considers the single subject requirement enacted as Article V, sec. 1(5.5) of the Colorado Constitution, the implementing statute and related policy considerations, and the case law that has developed around legislation and initiatives insofar as they related to the proposal’s single subject. *In re Title, Ballot Title and Submission Clause for Proposed Initiative #43*, 46 P.3d 438, 441-43 (Colo. 2002) (hereafter “#43”). Primary among the concerns to be addressed upon review is whether the measure joins two topics that would independently but for no related reason attract voter support and also

whether voters would be surprised that the measure includes the additional subject(s). *Id.*; see C.R.S. § 1-40-106.5(e)(I), (II).

This objection was raised in the Motion for Rehearing and at the rehearing itself. Motion for Rehearing at 1 (¶I.B., C., D.); **Exhibit D** at 4:24-8:11.

B. Initiatives #67, #68, and #69 violated the single subject requirement.

These measures create procedural hurdles to the amendment or repeal of any initiated statute, whether it was enacted in the 100 years between the creation of the right of initiative, is enacted at the 2012 election, or is enacted at some election in the future. This retroactivity is one of those hidden topics.

It is one thing to create a new procedure by which certain statutes are amended or repealed. That is a substantial restriction of existing legislative authority but arguably within the authority of the voters to adopt. After all, the legislature has that authority which has been ceded to it by the citizens. Colo. Const., art. V, sec. 1(1). Thus, one subject of these measures is certainly the change in the ways and conditions under which legislative authority can be exercised as to initiated statutes adopted in the future.

An additional subject contained in all three measures is the retroactive effect of these alterations of legislative authority. The breadth of subject matters addressed by each of these three measures is substantial, in part because the scope

of covered initiated statutes is so extensive. For example, a non-exhaustive list of initiated statutes adopted by Colorado voters includes the 8-hour work day for persons working in municipal fire departments, C.R.S. § 8-13-107 (adopted at 1920 general election), lobbyist registration and reporting requirements, C.R.S. § 24-6-203 (adopted at 1994 general election), campaign finance regulation and disclosure, C.R.S. §§ 1-45-101-103, 108, 109, 110, 114-117, 118 (adopted at 1996 general election), and closing the loophole for purchases of firearms at gun shows without a governmental background check. C.R.S. § 12-26.1-101, *et seq.*, (adopted at 2000 general election). One commentator has documented that just through the 2004 election, Colorado voters have adopted at least 26 different statutes. Polhill, Dennis, *Initiative and Referendum in Colorado* at 15-16 (2006) (**Exhibit F** attached hereto, Appendices A and B of Polhill report)).¹ None of these matters is necessarily connected with the others, and voters would not immediately know that they are adopting a hurdle that relates to all of these subjects. More ominously, the campaign could well seek to attract votes to the measure by offering to “preserve” lobbyist oversight or firefighter maximum workdays or gun show background checks by appealing to each of these groups and the initiated statutes that apply to

¹ www.iandrinstute.org/REPORT%202006-4%20Colorado.pdf

those specific interests. It is this element of logrolling that the single subject requirement was intended to foreclose.

Where an initiative's proponents sought to change certain petition procedures and rules of construction but also "establishe[d] the retroactive creation of substantive fundamental rights in all charter or constitutional petitions approved after 1990," they violated the single subject requirement of Art. V, sec. 1(5.5). *In re Title, Ballot Title and Submission Clause, and Summary for an Amendment Adding Section 2 to Article VII (Petition Procedures)*, 900 P.2d 104, 109 (Colo. 1995). At least in that measure, the proponents were only seeking to insulate the provisions approved over a period of about 5 years. Here, the designated representatives seek to insulate more than 100 years of citizen lawmaking from legislative reconsideration in addition to changing the rules that would apply to future initiated statutes. That change is simply so well concealed and so multifaceted that it cannot possibly comply with the single subject requirement.

That this change is well concealed is established by the history of these matters at the Title Board. The Board members did not even consider the retroactivity aspect of these measures at the initial title setting hearing. It simply did not "jump out" at them. **Exhibit D** at 9:10-17. If the skilled and

knowledgeable Board members would not discern the retroactive nature of the measure, how could voters be expected to do so?

The retroactivity of this measure brings to mind this Court's holding in #43. There, the Court found a violation where a proposed measure changed petition procedures, as one subject, but also prevented the repeal of any initiated measure that had previously been determined to violate the single subject requirement. In essence, the measure reached back to insulate multi-subject initiatives contained in a single constitutional article (*i.e.*, Colo. Const., Art. X, sec. 20 (TABOR)), from repeal by means of a single ballot proposal. 46 P.3d at 447-48. Similarly, here, these initiatives would reach back and radically change the way in which the legislature could adjust – whether for purely technical reasons or to effect a notable policy change – initiated statutes. Just as TABOR dealt with multiple subjects, so do the many initiated statutes that voters have adopted since this vehicle of direct democracy was approved in 1910.

Notably, this element of retroactivity is expressly written into these measures. This is not a case where the retroactivity of the measure is open to question and future judicial interpretation. There is no question that this measure was drafted for the purpose of applying retroactively. All three measures expressly state that they apply whether the affected statute “was enacted before or is enacted

after the effective date of this section.” The proponents never denied that this is their intent. **Exhibit D** generally. This reach-back to all previously adopted measures is precisely what the proponents intend to achieve. And because it is an explicit element of these initiatives, it reflects a matter that is well within the ambit of issues that this Court may consider.

Beyond the prospective change in legislative authority and the various initiated statutes that are insulated from change under rules that are different from those in place when they were adopted, Initiatives #68 and #69 also establish lower signature requirements in order to place before voters proposed initiated statutes. Initiative #68 lowers the existing 5% threshold to 4%, and Initiative #69 lowers the threshold to 3%. Thus, these two measures add yet another subject to the measures that would be before voters – initiative qualifications.

These three measures violated Colo. Const., art. V, sec. 1(5.5), and should be returned to the designated representatives so that they can reconfigure these proposals as multiple, single subject measures.

III. Fair and Accurate Ballot Title Violation

A. Standard of Review and Pertinent Record Citations.

The Title Board is charged with setting a title that fully, fairly, and accurately informs voters of the central elements of the measure. C.R.S. § 1-40-106(3)(b). The Board need not summarize every single provision in the proposed initiative, nor need it project the measure's effects. This Court will review the Title Board's decision *de novo* to determine whether it has satisfied the requirement for a balanced and informative title. In doing so, the Court grants great deference to the Board's determination but will reverse that decision if the title set is clearly misleading. *In re Title, Ballot Title and Submission Clause, and Summary for Initiative 1999-00 #256*, 12 P.3d 246, 255 (Colo. 2000).

This objection was raised in the Motion for Rehearing and at the rehearing itself. Motion for Rehearing at 2 (¶II.D.); *see also Exhibit D* at 12:4-14:21.

B. Initiatives #67, #68, and #69 violated the prohibition on misleading ballot titles.

If the retroactive application of this measure is not a single subject violation as addressed above, the omission of this aspect of the proposal is certainly a violation of the prohibition on misleading ballot titles.

The entire point of a ballot title is to provide voters, whether they are considering an initiative petition or the matter as it appears on the ballot, with

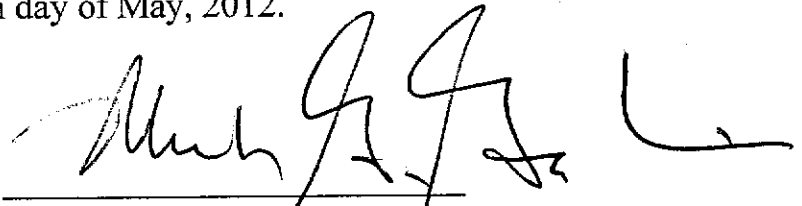
enough information about the measure's central elements to make a thoughtful decision about its merits. The measures under consideration in this case are all expressly retroactive. This element of retroactivity is "a matter of significance" that would be of interest to all voters, and the title is plainly inadequate by failing to mention it. *See In re Title, Ballot Title & Submission Clause, and Summary Pertaining to Proposed Election Reform Amendment*, 852 P.2d 28, 36 (Colo. 1993) (title needed to address aspect of redistricting measure that reduced number of members in Senate and increased number of members in House). Whether voters care about one side or the other of issues like lobbyist transparency, gun control, or restrictions on the work day of their municipal fire departments, they would want to know whether the initiated statutes of the past are being insulated from normal legislative reconsideration, whether it takes the form of an amendment or outright repeal. By refusing to address this issue in the title, though, the Board erred.

CONCLUSION

In light of the errors committed by the Title Board in setting ballot titles for Initiatives #67, #68, and #69, these measures should either: (1) be returned to the Title Board which should hold a rehearing at a meeting that both designated representatives attend; (2) be returned to the designated representatives in light of the multiple subjects addressed within each measure; (3) be returned to the Title

Board with instructions that the misleading nature of the titles be addressed with language reflecting that these measures are retroactive and apply to initiated statutes enacted prior to the election at which they are considered by voters; or (4) as to just #68 and #69, these two measures should be returned to the designated representatives because their inclusion of a lower percentage of petition signatures for initiated statutes (4% and 3% respectively) is a separate subject and thus violative of Article V, sec. 1(5.5) of the Colorado Constitution.

Respectfully submitted this 14th day of May, 2012.



Mark G. Grueskin, #14621
Heizer Paul Grueskin LLP
2401 15th 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 14th day of May, 2012, a true and correct copy of the foregoing **PETITIONER'S OPENING BRIEF** was served via Federal Express, to the following:

David Ottke
3308 S. Hannibal Street
Aurora, CO 80013

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

Maurice G. Knaizer, Esq.
Assistant Deputy Attorney General
Office of the Colorado Attorney General
1525 Sherman Street, 7th Floor
Denver, Colorado 80203



Amy Knight

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.

(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.

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

John Slota
2990 Shadow Creed Dr., #108
Boulder, CO 80303
303-638-2979
John.slota@gmail.com

RECEIVED

"Your Vote Counts Act" 2011-2012 #68

MAR 23 2012 12:30 P.M.

Final version . . .

ELECTIONS/LICENSING
SECRETARY OF STATE SWARD

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.

"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.

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

RECEIVED

MAR 23 2012

12:30 P.M.

**ELECTIONS/LICENSING
SECRETARY OF STATE**

S. WARD

"Your Vote Counts Act" 2011-2012 #69

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 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."

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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., #108
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 11th day of April, 2012.

HEIZER PAUL GRUESKIN LLP



Mark G. Grueskin

Objector's address:

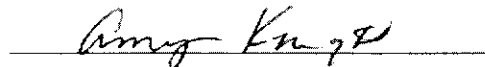
Philip Hayes, 5464 South Ward Way, Littleton CO 80127

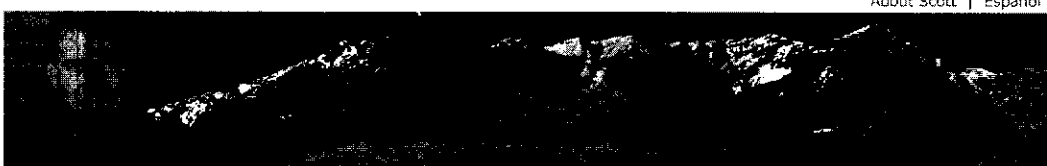
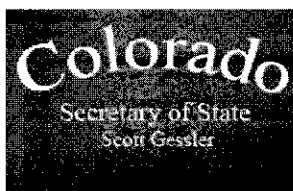
CERTIFICATE OF SERVICE

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

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





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

An amendment to the Colorado constitution requiring a vote of at least 3/4ths of the members of each house of the state legislature to amend or repeal any statute enacted by citizen initiative, unless the initiated statute includes a provision allowing for its amendment or repeal by a majority vote of the legislature or unless the legislature refers the amendment or repeal of an initiated statute to the voters.

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 requiring a vote of at least 3/4ths of the members of each house of the state legislature to amend or repeal any statute enacted by citizen initiative, unless the initiated statute includes a provision allowing for its amendment or repeal by a majority vote of the legislature or unless the legislature refers the amendment or repeal of an initiated statute to the voters?

Hearing April 4, 2012

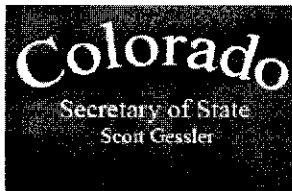
Single subject approved; staff draft amended; titles set.
Hearing adjourned 10:05 AM

Hearing April 19, 2012

Motion for Rehearing granted in part to the extent Board amended titles; denied in all other respects.
Hearing adjourned 10:50 AM

** Unofficially captioned "Citizen Initiative Process" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.*

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

An amendment to the Colorado constitution concerning statutes enacted by citizen initiative, and, in connection therewith, reducing 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; and requiring a vote of at least 3/4ths of the members of each house of the state legislature to amend or repeal any initiated statute, unless the initiated statute includes a provision allowing for its amendment or repeal by a majority vote of the legislature or unless the legislature refers the amendment or repeal of an initiated statute to the voters.

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 statutes enacted by citizen initiative, and, in connection therewith, reducing 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; and requiring a vote of at least 3/4ths of the members of each house of the state legislature to amend or repeal any initiated statute, unless the initiated statute includes a provision allowing for its amendment or repeal by a majority vote of the legislature or unless the legislature refers the amendment or repeal of an initiated statute to the voters?

Hearing April 4, 2012

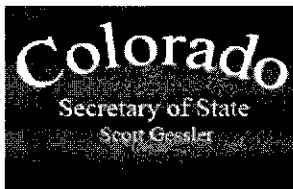
Single subject approved; staff draft amended; titles set.
Hearing adjourned 10:17 AM

Hearing April 19, 2012

Motion for Rehearing granted in part to the extent Board amended titles; denied in all other respects.
Hearing adjourned 10:51 AM

** Unofficially captioned "Citizen Initiative Process" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.*

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

An amendment to the Colorado constitution concerning statutes enacted by citizen initiative, and, in connection therewith, reducing the minimum number of signatures required to propose an initiated statute from 5% to 3% of the votes cast in the previous election for secretary of state; and requiring a vote of at least 3/4ths of the members of each house of the state legislature to amend or repeal any initiated statute, unless the initiated statute includes a provision allowing for its amendment or repeal by a majority vote of the legislature or unless the legislature refers the amendment or repeal of an initiated statute to the voters.

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 statutes enacted by citizen initiative, and, in connection therewith, reducing the minimum number of signatures required to propose an initiated statute from 5% to 3% of the votes cast in the previous election for secretary of state; and requiring a vote of at least 3/4ths of the members of each house of the state legislature to amend or repeal any initiated statute, unless the initiated statute includes a provision allowing for its amendment or repeal by a majority vote of the legislature or unless the legislature refers the amendment or repeal of an initiated statute to the voters?

Hearing April 4, 2012

Single subject approved; staff draft amended; titles set.
Hearing adjourned 10:20 AM

Hearing April 19, 2012

Motion for Rehearing granted in part to the extent Board amended titles; denied in all other respects.
Hearing adjourned 10:52 AM

** Unofficially captioned "Citizen Initiative Process" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.*

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INITIATIVE TITLE SETTING REVIEW BOARD
STATE OF COLORADO, DEPARTMENT OF STATE

REPORTER'S TRANSCRIPT OF TITLE BOARD HEARING
April 19, 2012

IN RE:

- INITIATIVE 67 - Citizen Initiative Process
- INITIATIVE 68 - Citizen Initiative Process
- INITIATIVE 69 - Citizen Initiative Process

PURSUANT TO NOTICE to all parties in interest, the above-entitled matter came on for public hearing before the Colorado Secretary of State's Initiative Title Setting Review Board on Thursday, April 19, 2012, commencing at 10:35 a.m., in the Aspen Conference Room, 1700 Broadway, Denver, Colorado, before Pamela Druelinger, Notary Public and Certified Shorthand Reporter, State of Colorado.

1 would like to speak to them all at one time.
 2 Apparently the individual asking for a
 3 rehearing here is attempting to inject political
 4 discussions on the merits or demerits, pro and
 5 con, of these three initiatives.
 6 The single issue, as I would state it,
 7 personally, involves changes in the procedures
 8 concerning the citizen initiative statutory laws.
 9 And, of course, there is one -- one
 10 change in the procedures at the beginning
 11 concerning the number of signatures in order to
 12 put the initiative on the ballot, and then there
 13 is a second procedure at the end involving what it
 14 would take to basically throw out or reverse
 15 the -- the law once it was passed by the voters.
 16 So I -- if I'm not mistaken, the
 17 Colorado Constitution strictly forbids bringing
 18 political discussion into the title process. The
 19 title process is strictly to simply state what the
 20 initiative is about for the benefit of the voter
 21 in the ballot box -- at the ballot box. And the
 22 political discussion is fine, but it really should
 23 be part of the -- if and when the statute is
 24 placed on the ballot, that's when the political
 25 discussion as to the merits or demerits of an

1 WHEREUPON, the following proceedings
 2 were taken:
 3 MS. STAIERT: All right. So the next
 4 one is Item Number 67. And the time is now 10:35.
 5 This is a Citizen Initiative Process. And I
 6 believe these were all somewhat similar.
 7 Would the proponent for 67 come
 8 forward.
 9 MR. OTTKE: I'm David Ottke, the
 10 proponent for 67, 68 and 69.
 11 MS. STAIERT: And the time is now
 12 10:35.
 13 Have you had an opportunity to read the
 14 Motion for Rehearing?
 15 MR. OTTKE: Yes.
 16 MS. STAIERT: Okay. And do you have
 17 any response to that motion?
 18 MR. OTTKE: Yes, I do. I would like to
 19 speak to -- in the interest of saving time, is it
 20 possible to speak to all three of these
 21 initiatives at the same time?
 22 MS. STAIERT: That's fine.
 23 MR. OTTKE: Because, obviously,
 24 eventually two of them will be withdrawn and there
 25 will be only one of the three on the ballot, so I

1 initiative should be discussed and argued before
 2 the electors.
 3 So I would -- I would suggest that --
 4 the decision by the Board that this is a single
 5 issue is really quite proper.
 6 MS. STAIERT: Thank you.
 7 MR. OTTKE: Thank you.
 8 MS. STAIERT: I should note that
 9 this Motion for Rehearing -- looks like this was
 10 also filed by Mr. Grueskin; is that correct?
 11 MR. GRUESKIN: Yes, it was.
 12 Thank you, Madam Chair. My name is
 13 Mark Grueskin. I'm an attorney. I'm appearing on
 14 behalf of Philip Hayes, the objector in this
 15 matter.
 16 As a preliminary matter I would note,
 17 as I did earlier, that 1-40-106(4)(a) requires --
 18 appears to require participation at this hearing
 19 by both proponents, and only one is here. And I
 20 would suggest that you need to deem the Motion for
 21 Rehearing admitted. I understand the Board has
 22 already ruled on that, but I just need to make a
 23 record.
 24 The issue on 67, 68, and 69 is a very
 25 well concealed provision. It was so well