

FILED IN THE SUPREME COURT  
MAY 22 2014

SUPREME COURT OF COLORADO  
2 East 14<sup>th</sup> Avenue, Denver CO 80203

Original Proceeding Pursuant to Colo. Rev. Stat. 1-40-107(2)

Appeal from the Ballot Title Board

OF THE STATE OF COLORADO  
Christopher T. Ryan, Clerk

In the Matter of the Title, Ballot Title, and Submission Clause  
for Proposed Initiative 2013-2014 #76 ("Recall of State and  
Local Officials")

**Petitioner:**

**PHILLIP HAYES**

v.

**Respondents:**

**MIKE SPALDING AND NATALIE MENTEN, and**

**Title Board: SUZANNE STAIERT; DANIEL DOMENICO;  
and JASON GELENDER**

Natalie Menten  
1755 S. Carr St.  
Lakewood CO 80232

Mike Spalding  
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Littleton CO 80127

Respondents

**RESPONDENTS' ANSWER BRIEF**

COURT USE ONLY

Case No.  
2014 SA 105

This contains 2,185 words in 11 pages. The standard for review is a new review but with substantial deference to the title board's decision.

We were verbally informed by the clerk's office when the brief was due, but not told there would be an answer brief as well. We learned about that only when we received two answer briefs of the other two parties on Tuesday, May 20, 2014.

We agree with the title board answer brief, so we do not answer it here. We do disagree with statements in the objector's answer brief. We ask permission to file this answer brief. We still don't know what the due date for it was, or whether it is even late, since we never received a court order setting a date. Objector's original error in mixing our two addresses may have been copied by the court clerks.

We assumed receiving one date meant there were simultaneous briefs in view of the short time before the entry deadline (the first week in August). We regret such a long legal process denies in fact our right to petition on a text first filed in January.

### **SINGLE SUBJECT**

Objector starts by saying our text, which reduces the length of Article XXI by over 1,000 words, “will reconfigure government by expanding the right of recall beyond recognition.” We will stipulate objector will vote against it on the ballot. But his personal view that it makes reforms he dislikes is not the single subject test.

Every objection he makes admits it is about the recall process only. It is not about education, water, taxes, roads, guns, land use, fishing, or any other subject.

Objector now concedes a petition may cover substantive and procedural changes,

a position he denied at the title rehearing and in his opening brief. He invents a new objection, that procedural changes may secretly “mask” substantive changes. He never explains how that happens. Frankly, we mortals can't visualize that process, nor how he can see that. Are multiple sentences typed over each other to render them unreadable? No. Is there a ink on the text so that words are visible only to objector? No. Where is this mask? What color is it? He has failed in his burden of proof to identify it and to overcome the long-standing legal deference due the title board.

Objector then says we are merely “tweaking the procedures associated with the right of recall,” when his prior paragraph called it a reconfiguration of government distorting recalls “beyond recognition.” Which is it? Can procedural tweaks be so apocalyptic, as he portrayed them in such overwrought terms in his opening brief? Objector never admits this court has said a text can be very broad and thorough in scope, so long as its parts are related or connected to the single subject--recall.

He says the right to recall would be “fundamentally expanded in ways that it could not now be applied.” That's why we propose this petition—to reform recalls. To him, “recall” is one subject, fundamentally expanding it is another, and having it apply in new ways is a third subject. His next sentence adds that being “a far cry” from changing the recall process is a fourth subject. No standard for single subjects

cites his subjective view of distance and noise. How far is too far? What noise is too loud (or too faint)? Single subject does not mean a minuscule topic or pusillanimous proposal. We aim to strengthen a fundamental constitutional right of the people. We have a right to propose to voters a plan that is effective, not theoretical, and solves real problems discovered when first used against state officials last year, after a century on the shelf with its illegal, unconstitutional, biased, vague, contradictory, open-ended, long-winded, and nearly-impossible requirements, at least two of which ended up before this court last fall.

Objector says the Groditsky case lawfully expanded by judicial “interpretation” the right to recall to positions not specifically stated in the current Article XXI, but citizens cannot petition to make explicit the scope of recall petitions. So greater application by court rulings is lawful, but straightforward, clear revisions by the people are not?

Objector again appeals to your self-interest and urges you to rewrite the text to kill any reference to accountability of judges. The title board answer brief points out that judges were included in the 1912 constitutional amendment as elective officers. Were voters told the 1966 judicial selection ballot issue amended Article XXI to restrict recalls? No.

We again refute objector's misleading claim that the direct object of a recall petition is the subject of this text. The single subject is the recall process; those to whom it applies are the direct objects of the recall. This is grade school grammar. "Bill 123 raises taxes on cars and boats." That single subject is raising taxes. Cars and boats are objects of the tax increase. If the bill were amended to add "planes," that would not be a new subject. This court agreed with that in prior tax cut petitions.

We have a right to elect successors to recalled elective officers. The recall process implements the will of voters. Objector's point arises only when an elective officer is recalled and no one succeeds him at the same election. Electing elective officers is naturally connected to providing a back-up election to elect a successor. Low turnout, high cost special elections of successors would be criticized, as would appointment of a successor not elected the first time. Objector thinks politicians are indispensable and the republic will collapse if any of them is not instantly replaced. We disagree with his dubious personal opinion. We require that state and municipal chief executives be replaced on an interim basis pending the next election. Objector never mentions that. He fears having one general assembly session with 99 members, not 100, cripples government. It is inconsistent with the people's will and representative government to have a recalled elective official replaced by someone appointed by

politicians.

We have a right to offer a different balance on electoral factors. Objector may propose his own petition, but he misuses this process as a soap box to express his political disagreement in the hopes this court sinks into a redrafting session. This is not the proper forum for testing campaign themes against a ballot issue that has not collected one signature because of this judicial review process.

Objector says the question on the petition form violates the single subject rule. We have a right to make the petition process efficient and to simplify the task of election officials. If we did not, objector would say in the campaign against our ballot issue that citizens would be beset by five times as many petition requests as necessary! We have a right to anticipate and refute that obvious campaign criticism.

For the umpteenth time (p. 4), objector says the text “allow for five officials in the same government to be recalled with the same petition.” Again, no one can be recalled by a petition, but only by an election. A petition only calls for an election. We made that rebuttal at least five times in our Opening Brief, yet objector tries to hypnotize this court with his known falsehood, over and over, showing he is acting in bad faith. Intentional misdescription by a lawyer is not a second subject to the actual text.

Objector's claim a petition requires only 20% of the stated petition requirement

is sophomoric sophistry. Recall petition entries need 5% of active registered electors in the recall area, not 1%. His hypothetical is untrue, unprovable, and refuted by the text. This court has refused to speculate in title rulings. It should continue to do so.

Once AGAIN, objector repeats on page 5 his pernicious fib that five people can “be recalled by means of a single recall petition.” The very next sentence repeats that intentional fabrication AGAIN. He then repeats the distortion that we have a one-person recall petition rule, which we do not, and surely won't have with passage of this text. He equates a “single direct object rule” with a single subject rule. Article V, section 1 (5.5) applies only to initiative petitions, not recall petitions. Objector wants this court to think there is a single subject rule for the object of a recall. Furthermore, only one name per vote is on the ballot, as Art. XXI provides now.

Objector's pattern of dishonest statements is chronic. Note that we filed a “Correction” to objector's first brief, which we thought would be his only brief. He said the state recall petition requirement was 5% for state petitions and 1% for local petitions. That is wholly untrue, but objector never recanted or apologized for his claim.

Objector quotes a ruling against “joining incongruous subjects.” Are his five members (direct objects) of a council incongruous? Should a petition burden to recall a corrupt council be quintupled because objector fools this court into inventing a single

direct object rule, in violation of 20 years of single subject jurisprudence? Citizens have a right to reduce the near-impossible burdens of existing recall law.

He repeats the threat of “recalled by means of a single petition” a third time (p.5)!

### **BALLOT TITLE WORDING**

A statute says, “Ballot titles shall be brief.” They should cite only major features, not every detail. Every officer is either elective or non-elective, so the title is all-encompassing already. If his change were adopted, he would then demand the title state it applies to partisan and non-partisan offices; legislative, executive, and judicial offices; state, county, municipal, school, fire, water, conservation, land, sanitation, mosquito (etc.) districts; multi-county districts; authorities, enterprises, etc. etc. If he won that, he would require each of the thousands of districts be listed by name! Objector wants to add anything to defeat the legal requirement of brevity.

The delay for a second election is a microscopic issue. It applies only when no one runs as a successor candidate to an elective officer. It excludes mayors and the lieutenant governor. It excludes appointed officers. It could be as few as 60 days, the time needed to set another election. It is a housekeeping detail, not an earthquake.

On page 6, objector hammers his known deception by suggesting the title board



echo his lie by saying “permits the recall of five officials...on one petition.” Every time he says it, we will deny it. No petition can recall anyone, ever. He backs up his point by an unsupported assertion speculating on a “likely rush of recalled officials.” He doesn't want that voter dissatisfaction addressed, and asks this court to help him subvert public trust and suppress accountability to voters by blocking our petition.

He calls his proposed title add-ons “other topics,” but cannot even list them without conceding they all relate to the single subject of recalls.

Our text makes it clear petitions are public documents. Nothing says they are secret. How can public officers and this court review petitions they can't see? The text says no one can force “naming paid circulators.” Circulators fill out affidavits to identify themselves. Only adult citizens may circulate, so government may verify that constitutional requirement is met by the way it drafts the affidavit. It is only the payment issue that is confidential, just as with the following phrase “or recall donors.” Both refer to money changing hands by private gift or contract. That's all we protect.

Proponents have stated repeatedly our intent. State law says our contemporary public statements describing our text are given great weight. The title board has accurately listed our campaign finance law exception for recalls. Finance refers to money, not names of any actual circulators of specific petition sections. The text

says perjury and forgery should be prosecuted. How can that be done if the names of circulators are secret? A court must always strive to reconcile all parts of a text.

Regarding circulator badges, we believe that requirement was stricken in federal court as a stigma or badge of shame. Regardless, this text clearly bans telling people what to wear, admit, or report when engaged in this constitutionally-protected activity.

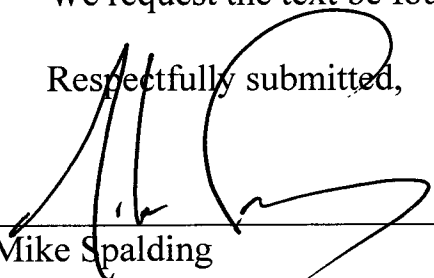
As for entry requirements, no title can list a changing number of entries for all recall areas. Objector used an example for governor in his opening brief. In special district elections in May, turnout is usually under five percent of electors. Today's recall requirement is 25% of all votes last cast for an office. A 25% minimum of a 4% turnout means the recall signature requirement is now 1% of voters. Our text makes that 5%, five times greater than current law. The legislature is free to move special elections to November, but we cannot, because that would be another subject. A 5%-of-electors requirement varies with increases in registered electors, just as the current recall entry requirement changes with every voter turnout.

These facts refute objector's claim of a drastic reduction in required entries. Some targets will rise; others will fall. All will change over time, just as they do now under the existing Article XXI. That is why it is not a key feature to add to lengthen the ballot title. Fluctuating numbers are the law now, and will remain so.

**PRAYER FOR RELIEF**


We request the text be found a single subject and that the ballot title stands as-is.

Respectfully submitted,



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Mike Spalding



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Natalie Menten

**CERTIFICATE OF SERVICE**

I hereby certify on May 22, 2014, I mailed a copy of this ANSWER BRIEF...

first-class postage paid, to:

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