

APR 28 2014

OF THE STATE OF COLORADO
DATE FILED: April 28, 2014
Christopher T. Ryan, Clerk

<p>SUPREME COURT OF COLORADO 2 East 14th Avenue, Denver CO 80203</p> <hr/> <p>Original Proceeding Pursuant to Colo. Rev. Stat. 1-40-107(2)</p> <hr/> <p>Appeal from the Ballot Title Board</p> <hr/> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2013-2014 #76 ("Recall of State and Local Officials")</p> <hr/> <p>Petitioner:</p> <p>PHILLIP HAYES</p> <p>v.</p> <p>Respondents:</p> <p>MIKE SPALDING AND NATALIE MENTEN, and</p> <p>Title Board: SUZANNE STAIERT; DANIEL DOMENICO; and JASON GELENDER</p> <hr/> <p>Natalie Menten 1755 S. Carr St. Lakewood CO 80232</p> <p>Mike Spalding 18 Buckthorn Drive Littleton CO 80127</p> <p>Respondents</p> <hr/> <p>RESPONDENTS' BRIEF</p>	<p>COURT USE ONLY</p> <hr/> <p>Case No. 2014 SA 105</p>
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NOTE: Petitioner made the following factual errors in his Petition:

1. He misspelled Mike Spalding's name in the caption.
2. His certificate of service sent Spalding's copy to Natalie Menten's street address, but in Spalding's city.
3. He sent Menten's copy to Spalding's street address, but in Menten's city.
4. He sent the Title Board's copy to the Board's former attorney, who retired months ago.
5. He omitted a case number, so respondents had to call the court to get it.

SINGLE SUBJECT

Petitioner says at the bottom of page 3 of his petition the text includes “a wide array of recall procedures” and says that it is a basis for labeling it multiple subjects. Since they are all “recall” procedures, that refutes his claim. A text may have many aspects of one overall subject. In an earlier case on a petition to reform the petition process, this court said just that. Respondents repeat verbatim here their annotated case citations from C.R.S. 1-40-106.5 that they gave to the Title Board at the rehearing:

B. SINGLE SUBJECT. The single subject is “recall of government officers.” The supreme court gives great deference to Title Board findings. That is a fair and neutral description of the broad subject.

1. This text repeals and re-enacts Article XXI. It cannot be limited by the existing law, because existing law is repealed. We have a right to start with a blank slate that allows recall of non-elective officers, whether or not included in the repealed Article XXI....

The case cited by objector (#43) does not apply. The supreme court described its four subjects this way:

Passing these Initiatives would: (1) liberalize the process by which initiatives and referendum petitions are placed on the ballot; (2) modify the content of initiative and referendum petitions

that are placed on the ballot by eliminating the single subject requirement; (3) prevent the repeal of the Taxpayer's Bill of Rights in a single initiative; and (4) prohibit referendum petitions that reduce private property rights.

That in no way compares to our text which is on recalls only—who, what, when, and how.

We need not repeal Article XXI, then wait for years to propose a substitute. Furthermore, we need not carry over requirements from the existing law that we wish to repeal and replace in its entirety with a new and comprehensive treatment of the recall process placed in one article of the constitution.

Objector thinks CO has a “single direct object” rule. The single subject here is recall of officers. Who can be recalled (the definition of officers) is the direct object of the recall. This is simple grammar. Defining how the single subject of recalls is applied is not a second subject.

Here are supreme court cases on the broad, liberal application of the single subject rule, copied from the annotated cases to C.R.S. 1-40-106.5, the single subject statute.

In order to violate the single subject requirement, the text of the measure must relate to more than one subject and have at least two distinct and separate purposes which are not dependent upon or connected with each other. The single subject requirement is not violated if the matters included are necessarily or properly connected to each other. In re Proposed Ballot Initiative on Parental Rights, 913 P.2d 1127 (Colo. 1996).

The single-subject requirement must be liberally construed so as not to impose undue restrictions on the initiative process. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998).

The single-subject requirement is not violated simply because an initiative with a single, distinct purpose spells out details relating to its implementation. As long as the procedures specified have a necessary and proper relationship to the substance of the initiative, they are not a separate subject. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998); In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

A proposed measure that tends to effect or to carry out one general purpose presents only one subject. Consequently, minor provisions necessary to effectuate the purpose of the measure are properly included within its text. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

Just because a proposal may have different effects or that it makes policy choices that are not invariably interconnected does not mean that it necessarily violates the single-subject requirement. It is enough that the provisions of a proposal are connected. Here, the initiative addresses numerous issues in a detailed manner. However, all of these issues relate to the management of development. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

To evaluate whether or not an initiative effectuates or carries out only one general object or purpose, supreme court looks to the text of the proposed initiative. The single-subject requirement is not violated if the "matters encompassed are necessarily or properly connected to each other rather than disconnected or incongruous". Stated another way, the single-subject requirement is not violated unless the text of the measure "relates to more than one subject and has at least two distinct and separate purposes that are not dependent upon or connected with each other". Mere implementation or enforcement details directly tied to the initiative's single subject will not, in and of themselves, constitute a separate subject. Finally, in order to pass the single-subject test, subject of the initiative should also be capable of being expressed in the initiative's title. In re Ballot Title 2005-2006 No. 73, 135 P.3d 736 (Colo. 2006); In re Ballot Title 2005-2006 No. 74, 136 P.3d 237 (Colo. 2006).

Single-subject requirement for ballot initiatives met where provisions in initiative make reference to the initiative's subject and the provisions are sufficiently connected to the subject. Matter of Title, Ballot Title, 917 P.2d 292 (Colo. 1996).

An election provision in a measure does not constitute a separate subject if there is a sufficient connection between the provision and the subject of the initiative. In re Ballot Title 1999-2000 No. 235(a), 3 P.3d 1219 (Colo. 2000).

Title board is vested with considerable discretion in setting the title, ballot title and submission clause, and summary. In reviewing actions of the title board, court must liberally construe the single-subject and title requirements for initiatives. Matter of Title, Ballot Title, 917 P.2d 292 (Colo. 1996); Matter of Title, Ballot Title, Submission Clause, 917 P.2d 1277 (Colo. 1996).

**** Proposed initiative contains only one subject. Although initiative is comprehensive, all of its numerous provisions relate to the single subject of reforming petition rights and procedures. Matter of Petition for Amend. to Const., 907 P.2d 586 (Colo. 1995). (emphasis added)*

Proposed initiative that applies a \$60 tax credit contains only one subject, even though it applies the credit to more than one tax and requires the state to replace monthly local government revenues lost because of the tax credit. Matter of Proposed Petition for an Amendment to the Constitution Adding Paragraph (8) (d) of Section 20 of Article X (Amend TABOR No. 32), 908 P.2d 125 (Colo. 1995).

The texts of the initiatives encompass the single subject of gaming activities conducted by nonprofit organizations. The initiatives detail what games of chance may be conducted, who may conduct such games, and how such games may be conducted. In re Proposed Init. Bingo-Raffle Lic. (I), 915 P.2d 1320 (Colo. 1996).

Proposed initiative did not violate the single-subject requirement where "the public's interest in state waters" was sufficiently narrow and connected with both a "public trust doctrine" and the assignment of water use rights to the public or a watercourse. Matter of Title, Ballot Title,

Submission Clause, 917 P.2d 1277 (Colo. 1996).

Proposed initiative did not contain more than one subject merely because it provided for alternative ways to accomplish the same result. The alternate ways were related to and connected with each other and plainly did not violate the single-subject requirement. Matter of Proposed Initiative 1996-17, 920 P.2d 798 (Colo. 1996).

Initiative that assessed fees for water pumped from beneath trust lands and then allocated the pumping fees for school finance was not considered two subjects by the court because the theme of the purpose of state trust lands and the educational recipient provide a unifying thread. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Proposed initiative concerning uniform application of laws to livestock operations was upheld without opinion against challenges on basis of single-subject requirement and on other grounds. Matter of Proposed Initiative 1997-98 No. 112, 962 P.2d 255 (Colo. 1998).

Measure to recognize marriage between a man and a woman as valid does not contravene the single subject requirement. In re Ballot Title 1999-2000 Nos. 227 and 228, 3 P.3d 1 (Colo. 2000).

Proposed initiative that employs a growth formula limiting the rate of future development, delineates a system of measurement to determine the "base developed" area of each jurisdiction, allows for alternative treatment of commenced but not completed projects, excludes low-income housing, public parks and open space, and historic landmarks, and establishes a procedure for exemptions does not violate the constitutional prohibition against single subjects. In re Ballot Title 1999-2000 No. 235(a), 3 P.3d 1219 (Colo. 2000). (Next book printing—change "single" to "multiple.")

Proposed initiative that prohibits school districts from requiring schools to provide bilingual education programs while allowing parents to transfer children from an English immersion program to a bilingual program does not contain more than one subject. In re Ballot Title 1999-2000 No. 258(A), 4 P.3d 1094 (Colo. 2000).

Enforcement provision under which election will be declared void and revenues collected pursuant to election will be refunded is directly tied to initiative's purpose of eliminating pay-to-play contributions and, therefore, is not a separate subject. Clause in question should be interpreted as nothing more than an enforcement or implementation clause that does nothing more than incorporate inherent right of taxpayers to challenge tax, spending, or bond measures when they have standing to do so. Thus, enforcement provision is not a separate subject but rather is tied directly to initiative's single subject. In re Ballot Title 2005-2006 No. 73, 135 P.3d 736 (Colo. 2006).

Proposed initiative that modifies only the existing rights and interests in water between private individuals and the public is a cohesive proposal to create a new water regime and contains a single subject of public control of waters. Its provisions are necessarily and properly connected to each other because they define the purpose of the initiative, describe the broadened scope of the public's control over the state's water resources, and outline how to implement and enforce a new dominant public water estate. In re Ballot Title 2011-2012 No. 45, 2012 CO 26, 274 P.3d 576.

Proposed initiative that creates a new legal regime, the Colorado public trust doctrine, to govern the public's rights in waters of natural streams contains a single subject. The proposed initiative does not contain an array of disconnected subjects joined together to garner support from various factions and does not contain surreptitious provisions that will surprise voters. In re Ballot Title 2011-2012 No. 3, 2012 CO 25, 274 P.3d 562.

The items numbered 1-5 by petitioner on page 4 of his petition are not separate subjects. They are procedures of the single subject—“recall of government officers.” In items 1 and 2, he repeats his ignorance of basic grammar in confusing subject and direct object. There is no such law regulating the latter part of speech.

Petitioner thrice misuses the word “surreptitiously” to refer to procedures stated openly in the text in plain English. In item 3, he dislikes the timing of an election for an elective position. His opinion is not a proper basis for finding multiple subjects.

In item 4, he falsely says officials may “be recalled by means of one petition.” No petition can recall anyone. It only demands an election. Voters decide on each officer separately. This efficiency reduces the signature verification burden by up to 80%, since all signers are in the same recall area. Paperwork and labor reduction for recall petitions is not a separate subject, nor is intelligence in a proposed reform.

Item 5 repeats item 4 and also contends an individual recall petition must have a “single subject” of recalling a single person. That is nonsense. The single subject rule is in Article V, section 1 (5.5), the legislative article, referring to initiative petitions, not in Article XXI, the recall article. He also repeats the canard that a petition can by itself recall any officer.

He again mixes single subject and single direct object. This court has ruled often a single subject, like a tax credit, can apply to multiple direct objects. See above cases. Otherwise, no statute could exist because it would apply to up to five million citizens. That bizarre view of personalized legislation turns the rule of law on its head. Equal protection of the law would be a nullity because each statutory or constitutional law could name only one person or one position. Since the same single subject rule also applies to the general assembly, state government would be brought to a halt. Colorado would be the laughing stock of America, mired in a state of anarchy. This court would be out of business. Such absurd results cannot flow from a ruling. This court has often said its decisions would be in error if they lead to irrational results.

Petitioner tempts this court to engage in a conflict of interest. He points out judicial officers would be subject to recall. He claims they are not now “elective officers” under existing Article XXI, a dubious proposition. Whether this new text

BALLOT TITLE WORDING

At the rehearing, the Title Board made concessions in the draft ballot title. Yet petitioner appeals as though they were not made. Petitioner dares to say the title is “not reflective of the intent of the proponents.” Proponents say, “Oh yes, it is!”

A ballot title is a summary of major features only. Voters will have the full text mailed to them, with arguments on both sides and a summary by state staff. Not all details get included. C.R.S.1-40-106 (3)(b) mandates “Ballot titles shall be brief...”

1. Petitioner requests the title say it “would extend to a wide array of appointed officers.” That subjective opinion expresses criticism, which the Title Board cannot do. It is also untrue. The text narrows the definition of who can be recalled. Article XXI now defines “elective officer” as “Every person having authority to exercise or exercising any public or governmental duty, power or function...(and) each of which said elective officers shall be subject to the recall provision of this constitution...”

2. He again demands the slanted phrase “a wide array of judicial officers” when the ballot title chosen makes it clear that eligibility for recall includes “certain non-elective officers.” The ballot title makes it clear both elective and non-elective officers are eligible for recall.

3. This is a false claim. The new text does not “eliminate public access to lists or names of persons who circulated recall petitions.” The completed petitions with names and addresses of all circulators on the attached affidavits are a public record. The text says payments to circulators shall be confidential to reduce retaliation or intimidation of those circulators, presumably by the government. (See decades of IRS scandals.) A “right” to recall subject to punishment for its exercise is no right at all.
4. Petitioner demanded a reference to petition entry requirements. Now he objects to that reference being made! Respondents agree to removing that clause the Title Board inserted to placate petitioner. Respondents told the Title Board using the word “initiate” regarding a recall was confusing. Noting differing numerical applications in each of 2,000+ governments is an impossible task. The numbers for both existing law and this text vary every election and every day in every recall area. In special district elections with low turnouts (2%-10%), future recall signature requirements would increase. Respondents agree with petitioner that clause should be stricken.
5. This is a minor administrative detail. It does not apply to non-elective officers; all are appointed. It applies only if elective officers are recalled and no successor qualifies by petition for that ballot. It avoids the cost of a low turnout special election.

It ensures elective officers are elected. It covers a rare event and is not a major principle of the measure.

6. This is another minor feature. Efficiency in government may be remarkable, but this relatively obscure sentence does not convey “the big picture” of how a revised recall process would work. Voters would still see separate names on their ballot. How many names were on a petition, how many days were allowed to collect or add state or local signatures, the treatment of entry details, etc. are of no public interest. Again, no petition may “trigger a recall of as many as five government officials.” A petition calls only for an election; it does not recall anyone.

7. This repeats item 6 and is yet more evidence of the frivolous nature of this case. For the last time. A petition calls only for an election; it does not recall anyone.

In the interests of brevity, the second clause of the ballot title should be shortened to read, “describing recalls procedures;” and forgo a confusing second reference to “initiate” recall elections that are not initiatives. The text does not mention “protest” or enforcement of “recall elections;” that is misleading.

Also, the last clause is a minor feature, given that campaign finance laws began

with and still focus on candidate donations. Recalls are about removing people from office. One can't buy votes of someone removed from office! The question of bribery does not apply to recalls; donations to successors must still be reported. The last clause should be deleted and the final "and" put before "prohibiting."

The legalistic "and, in connection therewith," should be replaced by "which." The following words ("defining, describing, and prohibiting") should be changed to "defines, describes, and prohibits." The word "describes" should be followed by "officers eligible for recall..." to avoid using "which" before and after "defines."

PRAYER FOR RELIEF

Petitioner again acts in bad faith by asking that the title be redrafted. He and his attorney know that the Title Board normally does not meet again until after the election. If a change be made here, the title board should be mandated to adopt it.

Respondents request that the petition be denied in its entirety, that the changes suggested by respondents be adopted, and that Mr. Grueskin be sanctioned for his frivolous misconduct made in bad faith, maliciously intended to make it impossible to collect petition signatures for this November's election. His misconduct should be punished, not rewarded, to set an example for all other attorneys tempted to waste

for their political advantage the time of this court and of sincere citizen reformers.

Respectfully submitted,



Mike Spalding



Natalie Menten

CERTIFICATE OF SERVICE

I hereby certify on April 24, 2014, I mailed a copy of this BRIEF... first-class postage paid, to:

Mark G. Grueskin #14621
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Secretary of State--Title Board
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Natalie Menten