

APR 09 2014

OF THE STATE OF COLORADO
Christopher T. Ryan, Clerk

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p> <hr/> <p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) 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> <p>Petitioner: PHILLIP HAYES v. Respondents: MIKE SPAULDING AND NATALIE MENTEN and</p> <p>Title Board: SUZANNE STAIERT; DANIEL DOMENICO; and JASON GELENDER</p>	<p style="text-align: right;">DATE FILED: April 9, 2014</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for Petitioner: Mark G. Grueskin, #14621 RECHT KORNFELD, P.C. 1600 Stout Street, Suite 1000 Denver, CO 80202 Phone: 303-573-1900 Facsimile: 303-446-9400 Email: mark@rechtkornfeld.com</p>	<p>Case No. <u>14SH105</u></p>
<p style="text-align: center;">PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2013- 2014 #76 (“RECALL OF STATE AND LOCAL OFFICIALS”)</p>	

\$ PAID

Phillip Hayes (“Petitioner”), registered elector of the State of Colorado, through undersigned counsel, respectfully petitions this court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Initiative 2013-2014 #76 (“Recall of State and Local Officials”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative #76

Mike Spaulding and Natalie Menten (hereafter “Proponents”) proposed Initiative 2013-2014 #76 (the “Proposed Initiative”). A review and comment hearing was held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter the Proponents submitted a final version of the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board, of which the Secretary or his designee is a member.

A Title Board hearing was held on March 19, 2014 to establish the Proposed Initiative’s single subject and set a title. On March 26, 2014 Petitioner filed a Motion for Rehearing, alleging that the title was misleading, did not fairly and correctly express the true meaning of the Proposed Initiative, and will lead to voter confusion. The rehearing was held on April 2, 2014, at which time the Title Board granted in part the Motion for Rehearing to cure certain deficiencies in the title it

had set but denied the Motion in other respects, some of which are at issue in this appeal.

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 the Motion for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1). 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(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of: (1) the draft, amended, and final versions of the initiative filed by the Proponents; (2) the original ballot title set for this measure; (3) the Motion for Rehearing filed by the Petitioner; and (4) the ruling on the Motion for Rehearing as reflected by the title and ballot title and submission clause set by the Board. Petitioner believes that the Title Board erred in denying certain aspects of the Motion for Rehearing. Consequently, this matter is properly before this Court.

ADVISORY STATEMENT OF GROUNDS FOR APPEAL

The Board lacked jurisdiction to set a title for #76 under Colo. Const., art. V, sec. 1(5.5). as the measure contains multiple subjects, including a wide array of recall procedures as well as the following:

1. The measure adds the substantive right to "recall" non-elective officers.
2. The measure adds the substantive right to "recall" judicial officers.
3. The measure surreptitiously leaves vacant certain offices (where no successor is elected) by prohibiting the naming of successors until the following November elections.
4. The measure surreptitiously allows for recall of multiple (up to five) officials on the same recall petition within "the same government" and thus allowing for different officials from different branches of government to be recalled by means of one petition.
5. The measure surreptitiously allows for recall of multiple (up to five) officials on the same recall petition, thus eliminating the "single subject" element of existing recall petitions – that is, the recall of a single elected official.

If the Board had jurisdiction to set a title for #76, the title it set was misleading, confusing, and not reflective of the intent of the proponents.

1. The title fails to state that "recall" would extend to a wide array of appointed officers.
2. The title fails to state that "recall" would extend to a wide array of judicial officers, none of whom are elected even though some – but not all – may be subject to the retention process.

3. The title fails to disclose that the measure eliminates public access to lists or names of persons who circulated recall petitions.
4. The title's reference to "altering the number of signatures required to initiate a recall" is not useful or informative for voters.
5. The title fails to state that, where there is no successor candidate elected, the office in question will remain vacant until "the next November election" at least 90 days later.
6. The title fails to state that single petitions may be used to trigger a recall of as many as five government officials.
7. The title fails to state that as many as five elective as well as appointed officials within "the same government" can be recalled by means of one petition.

PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the title set for the Proposed Initiative is neither fair nor accurate and remand the Proposed Initiative to the Title Board with instructions to redraft the title to accurately and fairly represent the text of the Proposed Initiative.

CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2013-2014 #76 (“RECALL OF STATE AND LOCAL OFFICIALS”)** was sent this day, April 9th, 2014, via first class U.S. mail, postage pre-paid to the proponents and their counsel and to counsel for the Title Board at:

Natalie Menten
18 Buckthorn Drive
Lakewood, CO 80232

Mike Spalding
1755 S. Carr St.
Littleton, CO 80127

Maurice Knaizer
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203

Erin Holweger



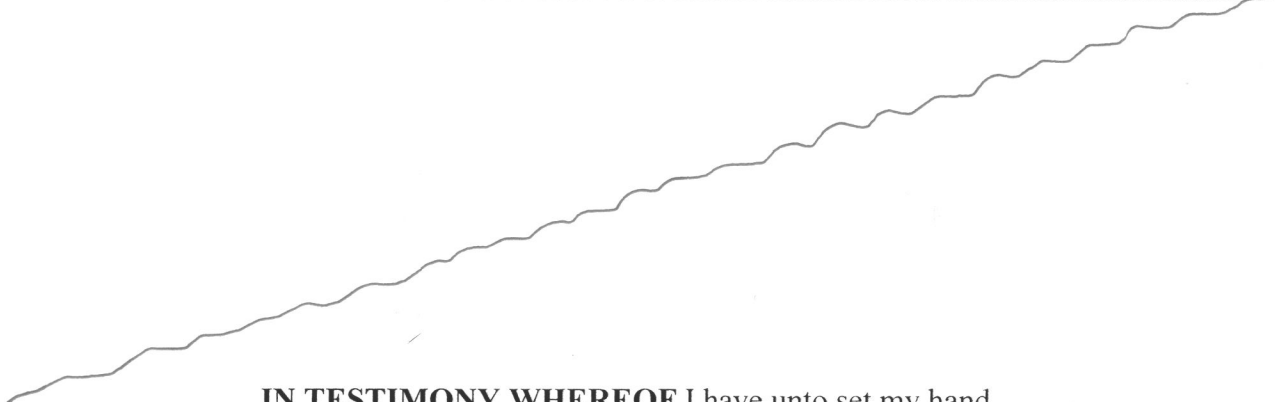
STATE OF COLORADO

DEPARTMENT OF
STATE

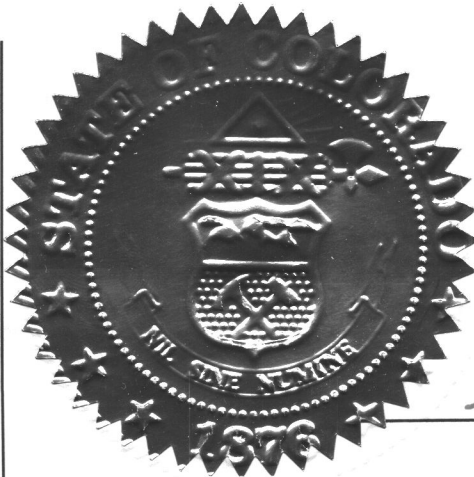
CERTIFICATE

I, **SCOTT GESSLER**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the original text, amended text, final text, motion for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2013-2014 #76 'Recall of State and Local Officers'"



..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 4th day of April, 2014.



A handwritten signature in cursive script, reading "Scott Gessler", written over a horizontal line.

SECRETARY OF STATE

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

RECEIVED S.WARD
MAR 06 2014 2:00 P.M.

Article XXI of the Colorado Constitution is repealed and re-enacted as follows:

Colorado Secretary of State

Article XXI. RECALL FROM OFFICE.

Section 1. Eligibility. Any elective officer in any state or local legislative, executive, or judicial office is eligible for recall. Any non-elective officer is eligible for recall when that person is the head, a board member, or a judicial officer of any state or local authority, agency, commission, department, division, enterprise, bureau, district, office, or board, or other government entity that has governmental power or collects, spends, borrows, or loans public money. This article intends to increase public accountability of public servants.

Section 2. Procedures. (1) Five registered electors eligible to vote on the recall may file at any time a signed request to recall any officers listed in section 1. Statewide recalls shall be conducted by the secretary of state. Other recalls shall be conducted by the election official of any county, or city and county, in the recall area.

(2) Election officials shall deliver a requested sample petition section within two days. Each black ink section shall contain 100 entry lines, 20 per 8 1/2" by 14" page in portrait layout, a circulation affidavit, and the question, "Shall (names of officers) be recalled as (titles and name of government)?" No government shall detain, stop, cite, or arrest petition circulators or signers for or while peacefully petitioning. Recall-related perjury, forgery, and felony frauds shall be prosecuted.

(3) Statewide petition entries shall be filed within 180 days of sample petition section delivery, and local petition entries within 90 days. One 30-day extension to file added entries signed at any time shall start from the date a decision of invalidity is issued. That decision shall be the later of the official report or the court results. Those added entries shall be reviewed similarly.

(4) The required number of valid petition entries shall be the lesser of 5% of active registered electors in the recall area or 100,000 such entries. Signers shall be registered electors in the recall area. If elective officers serve a council, legislative, or other district, that district shall be the recall area. Entry lines shall require only signature and printed name, residential address, and city or town. No error, use, or lack of minor details like middle names or initials, common nickname, street type or direction, apartment, or postal code shall void an entry. Each entry shall be reviewed individually, with no random or statistical sampling or machine reading. Errors in affidavits or sample sections shall not void entries. Entries with a readable first and last name and address, and an attached affidavit with or without errors, shall be presumed valid until disproved by clear and convincing evidence.

(5) Within 20 days of filing, the election official shall count, examine, itemize, and report entries for validity. Within 10 days of that report, only recall filers and the officer may each file without a fee a protest to the supreme court for its new review of disputed entries. Such review shall be conducted, and its results shall issue within 30 days of the protest filing. No party shall receive attorney fees or costs.

(6) Elections shall be held on a Tuesday within 60 days of the last validation decision, but statewide elections shall be in November only. Death, resignation, or removal from office shall stop the recall election but not the vacancy election. Ballots shall repeat without argument the petition question for each officer, list "Yes" and "No" choices, and list one website for each side.

(7) Ballots shall then list candidates nominated to complete the term, and list one website for each. The officer is ineligible. The required number of valid petition entries shall be the lesser of 1% of active registered electors in the recall area or 10,000 such entries. Entries shall be filed by 10 days after the earlier of the first recall entry filing or a recall stopped as provided above. Validation and extension

deadlines shall be 20% of the time allowed for recall entries. Unless otherwise stated in this article, the standards for recall petitions shall apply to nominations in recall or later vacancy elections.

(8) Successors shall be installed at once. With no successor, a vacancy is filled by like means in the next November election at least 90 days later. In the interim, the lieutenant governor replaces a recalled governor and mayoral offices may be filled. Recall petitions against successors shall not start for two years. Non-elective officer vacancies are filled by appointments.

Section 3. Enforcement. (1) No officer in a recall shall conduct that recall or decide its entry validity. No person shall sign a petition more than once. An entry made by good faith mistake is not unlawful. Any Colorado adult citizen may circulate any petition. To reduce retaliation and intimidation, no law, rule, or court shall prohibit, regulate, or limit recall or candidate petition circulator payments or recall donors, or require naming paid circulators or recall donors. No person shall receive government money, labor, or aid, directly or indirectly, to defeat any recall or to repay any recall campaign costs.

(2) "Elective" means in an office subject to regular or retention elections, whether or not appointed or term limited. Recalled officers, and those who resigned or were removed from office during their recall process, shall not be any officer, as defined in section 1, for the next four years. Up to five officers in the same government may be listed on one recall petition, but they shall be voted on separately. No one officer shall be listed on a recall ballot more often than once every four years. This article also applies in all home rule jurisdictions as a matter of statewide concern. The secretary of state website shall always list by name, title, and government all officers eligible for recall, and also all persons ineligible to be section 1 officers until the date listed on that website.

(3) To enforce this article on issues other than specific entry validity, any Colorado adult citizen may file a district court case, which shall be decided within 30 days. Direct appeals to the supreme court filed within 10 days thereafter shall be decided within 60 days. Only successful plaintiffs enforcing this article shall be awarded their costs, attorney fees, and damages. This article is self-executing, severable, and effective upon passage. It shall be interpreted strictly in favor of this fundamental right to petition for recall and replacement, and against all officers and all governments. It supersedes all conflicting state and local constitutional, statutory, charter, and other laws and legal provisions.

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

RECEIVED S.WARD
MAR 06 2014 2:00 P.M.

Article XXI of the Colorado Constitution is repealed and re-enacted as follows:

Colorado Secretary of State

Article XXI. RECALL FROM OFFICE.

Section 1. Eligibility. Any elective officer in any state or local legislative, executive, or judicial office is eligible for recall. Any non-elective officer is eligible for recall when that person is the head, a board member, or a judicial officer of any state or local authority, agency, commission, department, division, enterprise, bureau, district, office, or board, or other government entity that has governmental power or collects, spends, borrows, or loans public money. This article intends to increase public accountability of public servants.

Section 2. Procedures. (1) Five registered electors eligible to vote on the recall may file at any time a signed request to recall any officers listed in section 1. Statewide recalls shall be conducted by the secretary of state. Other recalls shall be conducted by the election official of any county, or city and county, in the recall area.

(2) Election officials shall deliver a requested sample petition section within two days. Each black ink section shall contain 100 entry lines, 20 per 8 1/2" by 14" page in portrait layout, a circulation affidavit, and the question, "Shall (names of officers) be recalled as (titles and name of government)?" No government shall detain, stop, cite, or arrest petition circulators or signers for or while peacefully petitioning. Recall-related perjury, forgery, and felony frauds shall be prosecuted.

(3) Statewide petition entries shall be filed within 180 days of sample petition section delivery, and local petition entries within 90 days. One 30-day extension to file added entries signed at any time shall start from the date a decision of invalidity is issued. That decision shall be the later of the official report or the court results. Those added entries shall be reviewed similarly.

(4) The required number of valid petition entries shall be the lesser of 5% of active registered electors in the recall area or 100,000 such entries. Signers shall be registered electors in the recall area. If elective officers serve a council, legislative, or other district, that district shall be the recall area. Entry lines shall require only signature and printed name, residential address, and city or town. No error, use, or lack of minor details like middle names or initials, common nickname, street type or direction, apartment, or postal code shall void an entry. Each entry shall be reviewed individually, with no random or statistical sampling or machine reading. Errors in affidavits or sample sections shall not void entries. Entries with a readable first and last name and address, and an attached affidavit with or without errors, shall be presumed valid until disproved by clear and convincing evidence.

(5) Within 20 days of filing, the election official shall count, examine, itemize, and report entries for validity. Within 10 days of that report, only recall filers and the officer may each file without a fee a protest to the supreme court for its new review of disputed entries. Such review shall be conducted, and its results shall issue within 30 days of the protest filing. No party shall receive attorney fees or costs.

(6) Elections shall be held on a Tuesday within 60 days of the last validation decision, but statewide elections shall be in November only. Death, resignation, or removal from office shall stop the recall election but not the vacancy election. Ballots shall repeat without argument the petition question for each officer, list "Yes" and "No" choices, and list one website for each side.

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deadlines shall be 20% of the time allowed for recall entries. Unless otherwise stated in this article, the standards for recall petitions shall apply to nominations in recall or later vacancy elections.

(8) Successors shall be installed at once. With no successor, a vacancy is filled by like means in the next November election at least 90 days later. In the interim, the lieutenant governor replaces a recalled governor and mayoral offices may be filled. Recall petitions against successors shall not start for two years. Non-elective officer vacancies are filled by appointments.

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(2) "Elective" means in an office subject to regular or retention elections, whether or not appointed or term limited. Recalled officers, and those who resigned or were removed from office during their recall process, shall not be any officer, as defined in section 1, for the next four years. Up to five officers in the same government may be listed on one recall petition, but they shall be voted on separately. No one officer shall be listed on a recall ballot more often than once every four years. This article also applies in all home rule jurisdictions as a matter of statewide concern. The secretary of state website shall always list by name, title, and government all officers eligible for recall, and also all persons ineligible to be section 1 officers until the date listed on that website.

(3) To enforce this article on issues other than specific entry validity, any Colorado adult citizen may file a district court case, which shall be decided within 30 days. Direct appeals to the supreme court filed within 10 days thereafter shall be decided within 60 days. Only successful plaintiffs enforcing this article shall be awarded their costs, attorney fees, and damages. This article is self-executing, severable, and effective upon passage. It shall be interpreted strictly in favor of this fundamental right to petition for recall and replacement, and against all officers and all governments. It supersedes all conflicting state and local constitutional, statutory, charter, and other laws and legal provisions.

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extension deadlines shall be 20% of the time allowed for recall entries. Unless otherwise stated in this article, the standards for recall petitions shall apply to nominations in recall or later vacancy elections.

(8) Successors shall be installed at once. With no successor, a vacancy is filled by like means in the next November election at least 90 days later. In the interim, the lieutenant governor replaces a recalled governor and mayoral offices may be filled. Recall petitions against successors shall not start for two years. Non-elective officer vacancies are filled by appointments.

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(2) "Elective" means in an office subject to regular or retention elections, whether or not appointed or term limited. Recalled officers, and those who resigned or were removed from office during their recall process, shall not be any officer, as defined in section 1, for the next four years. Up to five officers in the same government may be listed on one recall petition, but they shall be voted on separately. No one officer shall be listed on a recall ballot more often than once every four years. This article also applies in all home rule jurisdictions as a matter of statewide concern. The secretary of state website shall always list by name, title, and government all officers eligible for recall, and also all persons ineligible to be section 1 officers until the date listed on that website.

(3) To enforce this article on issues other than specific entry validity, any Colorado adult citizen may file a district court case, which shall be decided within 30 days. Direct appeals to the supreme court filed within 10 days thereafter shall be decided within 60 days. Only successful plaintiffs enforcing this article shall be awarded their costs, attorney fees, and damages. This article is self-executing, severable, and effective upon passage. It shall be interpreted strictly in favor of this fundamental right to petition for recall and replacement, and against all officers and all governments. It supersedes all conflicting state and local constitutional, statutory, charter, and other laws and legal provisions.

RECEIVED

MAR 06 2014

S. WARD
2:00 P.M.

Colorado Secretary of State

ORIGINAL DRAFT

Article XXI of the Colorado Constitution is repealed and re-enacted as follows:

Article XXI. RECALL FROM OFFICE.

Section 1. Application.

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Section 2. Procedures.

(1) Five registered electors eligible to vote on the recall may file at any time a signed request to recall any officer in section 1. Statewide recalls shall be conducted by the secretary of state. Other recalls shall be conducted by the election official of any county, or city and county, in the recall area. A petition section shall contain 100 entry lines and a circulation affidavit. Each section shall print without argument, "Shall (insert names of officers) be recalled as (insert titles and name of government)?"

(2) No government shall detain, stop, cite, or arrest peaceful petition circulators or signers. Court jurisdiction over such actions shall apply only to perjury, forgery, and other felonies. Statewide petition entries shall be filed within 180 days of sample petition section delivery, and local petition entries within 90 days. When valid petition entries are insufficient, one 30-day extension to file added entries signed at any time shall start from the date the final decision of invalidity is issued. The final decision shall be the election official report or the supreme court review results, whichever is later.

(3) The required number of valid petition entries shall equal 5% of active registered electors in the recall area, but never more than 100,000 such entries. Signers shall be registered electors in the recall area. If elective officers serve a council, legislative, or other district, that district shall be the recall area. Entries shall require only signature and printed name, residential address, city or town, and date of signing. No error, use, or lack of minor details like middle initial or middle name, common nickname, street type or direction, apartment number, Zip code, or full date shall void an entry. Each entry shall be reviewed individually, with no random or statistical sampling. Errors in affidavits or sample sections shall not void entries. Entries with a readable first and last name and address, and an attached affidavit with or without errors, shall be presumed valid until disproved by clear and convincing evidence.

(4) Within 20 days of filing, the election official shall count, examine, itemize, and report entries for validity. Within 10 days of that report, only recall filers and the officer may each file without a fee a protest to the supreme court for its new review of itemized entries. Such review shall be conducted, and its results shall issue within 30 days of the protest filing. No party shall receive attorney fees or costs.

(5) Recall elections shall be held on a Tuesday within 60 days of a final decision of sufficiency. Death, resignation, or removal from office shall stop the recall petition but not the election to fill an elective officer vacancy. Recall ballots shall repeat without argument the petition question for each officer, and list one website per side for the recall filers and the officer.

(6) Ballots shall list candidates nominated to complete the term, and list one website for each. The officer is ineligible. Petitions require valid entries equal in number to 1% of active registered electors in the recall area, but never more than 10,000 such entries. For the two major political parties in partisan nominations, signers shall be registered since the recall started with the party of their candidate. Signers shall be registered in the recall area. Entries shall be filed by the later of five days after recall entry filing or 30 days after a recall stops as provided above. Entry validation and extension deadlines shall be 30% of the time for such recall deadlines. Only candidates may protest the report on validity.

(7) Successors shall be installed at once. With no successor, a vacancy is filled in the next November election at least 90 days later. In the interim, the lieutenant governor replaces a recalled governor and mayoral offices may be filled. Non-elective officer vacancies are filled by appointments.

Section 3. Enforcement.

(1) Perjury, forgery, and other felony charges shall be prosecuted. An individual petition entry made by good faith mistake is not criminal. Any Colorado adult may circulate any recall or nomination petition. No officer in a recall shall conduct that recall or decide its entry validity. To reduce retaliation and intimidation, no law or rule shall prohibit, regulate, or limit recall or successor candidate circulator payments or recall donors, or require naming such paid circulators or recall donors. No officer in a recall shall receive government money, labor, or aid to defeat the recall or repay recall campaign costs.

(2) "Elective" means subject to regular or retention elections, whether or not first appointed. Election officials shall deliver a requested sample petition section within two days. Recalled officers, and those who resigned or were removed during their recall process, shall not be state or local officers listed in section 1 for the next four years. Up to seven officers in the same government may be listed on one recall petition, but they shall be listed in separate ballot questions. No officer shall be on a recall ballot more often than once every four years. This article also applies in home rule jurisdictions as a matter of statewide concern. The secretary of state website shall always list by name, title, and government all state and local officers eligible for recall.

(3) Any Colorado adult may file a district court complaint, decided within 60 days, to enforce this article. Direct appeals to the supreme court filed within 10 days thereafter shall be decided within 60 days. Only successful plaintiffs enforcing this article shall be awarded their costs and attorney fees. This article is self-executing, severable, and effective upon passage. It shall be interpreted strictly in favor of the fundamental right to petition for recall and replacement, and against the officers and all governments involved. It may be strengthened by state statutes. It supersedes all conflicting state and local constitutional, statutory, charter, and other laws and legal authorities.

Ballot Title Setting Board

Proposed Initiative Number 2013-2014 #76¹

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

An amendment to the Colorado constitution concerning the recall of government officers, and, in connection therewith, defining which officers are eligible for recall; describing procedures and requirements to initiate, conduct, protest, and enforce recall elections; prohibiting any officer who is recalled, resigns, or is removed during the recall process from serving in certain offices for four years; and prohibiting the application of certain campaign finance requirements to recalls.

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 the recall of government officers, and, in connection therewith, defining which officers are eligible for recall; describing procedures and requirements to initiate, conduct, protest, and enforce recall elections; prohibiting any officer who is recalled, resigns, or is removed during the recall process from serving in certain offices for four years; and prohibiting the application of certain campaign finance requirements to recalls.

*Hearing March 19, 2014:
Single subject approved; staff draft amended, titles set.
Hearing adjourned 10:41 a.m.*

¹Unofficially captioned “**Recall of State and Local Officers**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

RECEIVED

MAR 26 2014

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Colorado Secretary of State

SWARD 4:00 P.M.

Philip Hayes, Objector

vs.

Mike Spaulding and Natalie Menten, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2013-2014 #76

Phillip Hayes, through legal counsel, Recht Kornfeld P.C., objects to the Title Board's title and ballot title and submission clause set for Initiative 2013-14 #76 ("Recall of State and Local Officials").

On March 19, 2014, the Board set the following ballot title and submission clause:

Shall there be an amendment to the Colorado constitution concerning the recall of government officers, and, in connection therewith, defining which officers are eligible for recall; describing procedures and requirements to initiate, conduct, protest, and enforce recall elections; prohibiting any officer who is recalled, resigns, or is removed during the recall process from serving in certain offices for four years; and prohibiting the application of certain campaign finance requirements to recalls.

ADVISORY GROUNDS FOR RECONSIDERATION

A. The Board lacks jurisdiction to set a title for #76 under C.R.S. 1-40-105(4)

The measure's designated representatives failed to provide to the Title Board and the public a properly "amended" version of their initiative that shows what specific language was deleted. *In the Matter of the Title, Ballot Title and Submission Clause, and Summary for Initiative 1997-97 #109*, 962 P.2d 252 (Colo. 1998).

B. The Board lacks jurisdiction to set a title for #76 under Colo. Const., art. V, sec. 1(5.5), as the measure contains multiple subjects.

1. The measure adds the substantive right to "recall" non-elective officers, which is a subject distinct from changing existing recall procedures. *In re Title, Ballot Title & Submission Clause for Proposed Initiative 2001-02 #43*, 46 P.3d 438 (Colo. 2002) (changing both substantive rights and procedures around initiative process violated single subject rule); see *Fraternal Order of Police, Colorado Lodge Lodge #19 v. City of Commerce City*, 996 P.2d 133, 135-37 (Colo. 2000) (Art. XXI, sec. 4 prevents against unlawful delegation of power and provides for political accountability in government decision-making, rather than a right of recall as applied to appointed officials).
2. The measure adds the substantive right to "recall" judicial officers, which is a subject distinct from changing existing recall procedures. *In re Proposed Initiative Adding Section 2 to Article VII*, 900 P.2d 104, 109 (Colo. 1995) (substantive and procedural elements of measure dealing with, among other things, right of recall violated single subject requirement).
3. The measure surreptitiously leaves vacant certain offices (where no successor is elected) by prohibiting the naming of successors until the following November elections. See *In re Proposed Election Reform Amendment*, 852 P.2d 28, 36 (Colo. 1993).
4. The measure surreptitiously allows for recall of multiple (up to five) officials on the same recall petition within "the same government" and thus allowing for different officials from different branches of government to be recalled by means of one petition.
5. The measure surreptitiously allows for recall of multiple (up to five) officials on the same recall petition, thus eliminating the "single subject" element of existing recall petitions – that is, the recall of a single elected official. Colo. Const., art. XXI, sec. 1 (“procedure hereunder to recall an elective public officer...; “a successor of the incumbent sought to be recalled”; “the officer named in said petition”; “the person sought to be recalled”; “a successor to the incumbent”); #43, *supra* (change to single subject rule for initiatives a separate subject from other substantive right changes and procedural changes).
6. The measure contains separate subjects: repeal of Article XXI, which contains disparate subjects (including the substantive right of recall, procedures associated with recall petitions, procedures associated with recall and successor elections, plenary authority of local governments over recall within their jurisdictions, repayment of costs of unsuccessful recall elections, and legislative authority to enact recall related legislation); and the reenactment of a replacement provision that also contains multiple subjects. *In re*

Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996) (substantive repeal and reenactment of multi-subject constitutional measure violates single subject requirement).

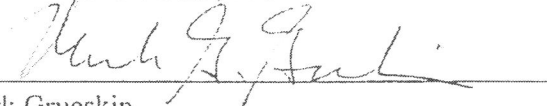
7. The repeal of sections of Article XXVIII of the Colorado Constitution (reporting of donors to recall campaigns which qualify as ballot issues) and the substantive change to the reporting of petition circulators, which acts as an anti-fraud protection, are separate subjects. *Doe v. Reed*, 130 S. Ct. 2811 (2010).

C. Even if the Board has jurisdiction to set a title for #76, the title it set was misleading, confusing, and not reflective of the intent of the proponents.

1. The title fails to state that "recall" would extend to appointed officers who do not stand for any election under existing law.
2. The title fails to state that "recall" would extend to a wide array of judicial officers, none of whom are elected even though some – but not all – may be subject to the retention process.
3. The title fails to disclose that the measure eliminates campaign finance reporting by persons or entities supporting any recall effort, whether it is for an elective, non-elective, or judicial officer.
4. The title fails to disclose that the measure eliminates public access to lists or names of persons who circulated recall petitions.
5. The title fails to state that the measure significantly reduces the number of signatures required for a sufficient recall petition.
6. The title fails to state that the measure significantly reduces the number of signatures required for a sufficient candidate petition.
7. The title fails to state that, where there is no successor candidate elected, the office in question will remain vacant until "the next November election" at least 90 days later.
8. The title fails to state that single petitions may be used to trigger a recall of as many as five government officials.
9. The title fails to state that as many as five elective as well as appointed officials within "the same government" can be recalled by means of one petition.

RESPECTFULLY SUBMITTED this 26th day of March, 2014.

RECHT KORNFIELD, P.C.



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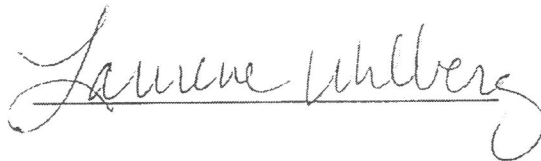
Philip Hayes
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Littleton CO 80127

CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2013-2014 #76** was sent this day, March 26, 2014, via first class U.S. mail, postage pre-paid to the proponents at:

Mike Spalding
18 Buckthorn Drive
Littleton, CO 80127

Natalie Menten
1755 S. Carr St.
Lakewood, CO 80232



Ballot Title Setting Board

Proposed Initiative Number 2013-2014 #76¹

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

An amendment to the Colorado constitution concerning the recall of government officers, and, in connection therewith, defining which officers are eligible for recall, including certain non-elective officers; describing procedures and requirements to initiate, conduct, protest, and enforce recall elections; altering the number of signatures required to initiate a recall; prohibiting any officer who is recalled, resigns, or is removed during the recall process from serving in certain offices for four years; and prohibiting the application of certain campaign finance requirements to recalls.

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 the recall of government officers, and, in connection therewith, defining which officers are eligible for recall, including certain non-elective officers; describing procedures and requirements to initiate, conduct, protest, and enforce recall elections; altering the number of signatures required to initiate a recall; prohibiting any officer who is recalled, resigns, or is removed during the recall process from serving in certain offices for four years; and prohibiting the application of certain campaign finance requirements to recalls?

*Hearing March 19, 2014:
Single subject approved; staff draft amended, titles set.
Hearing adjourned 10:41 a.m.*

*Hearing April 2, 2014:
Motion for Rehearing granted to the extent that the Board made changes to the title; denied in all other respects.
Hearing adjourned 11:27 a.m.*

¹Unofficially captioned “**Recall of State and Local Officers**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.