

SUPREME COURT OF COLORADO
2 East 14th Ave.
Denver, CO 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 Initiative
2013-2014 #124 (“School Board Open
Meetings”)

Petitioner: Patricia S. Peters
v.
**Respondents: Jon Caldera and Mike
Kraus**

and

**Title Board: SUZANNE STAIERT;
DAVID BLAKE; and JASON
GELENDER**

▲ COURT USE ONLY ▲

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

Case No. _____

**PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE
SETTING BOARD CONCERNING PROPOSED INITIATIVE 2013-
2014 #124 (“SCHOOL BOARD OPEN MEETINGS”)**

Patricia S. Peters (“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 #124 (“School Board Open Meetings”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative #124

Jon Caldera and Mike Kraus (hereafter “Proponents”) proposed Initiative 2013-2014 #124 (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 April 16, 2014 to establish the Proposed Initiative’s single subject and set a title. On April 23, 2014 Petitioner filed a Motion for Rehearing, alleging that the title was confusing, misleading, and failed to reflect the intent of the Proponents. The rehearing was held on April 24, 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.

GROUND FOR APPEAL

In violation of C.R.S. §§ 1-40-106, -107, the title set by the Title Board is unfair, misleading, does not fairly and correctly express the true meaning of the

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

1. The title misstates the subject of the proposed measure which is actually to redefine "local public body," as used in Colorado's open meetings law, to include groupings of school district officials and an employee representative who discuss a collective bargaining agreement.
2. The title incorrectly states that "any meeting" of the newly defined "local public body" must be open to the public, as this initiative does not seek to prevent this local public body from meeting in executive session under a variety of statutorily authorized circumstances.

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.

Respectfully submitted this 1st day of May, 2014.

/s Mark Grueskin

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@rechkornfeld.com

ATTORNEYS FOR PETITIONER

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 #124 (“SCHOOL BOARD OPEN MEETINGS”)** was sent this day, May 1, 2014, via first class U.S. mail, postage pre-paid to the proponents and their counsel and, via ICCES, to counsel for the Title Board at:

Jon Caldera
727 E. 16th Avenue
Denver, CO 80203

Mike Kraus
727 E. 16th Avenue
Denver, CO 80203

Sueanna P. Johnson
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203

Erin Holweger



DATE FILED: May 1, 2014 1:49 PM

STATE OF COLORADO

DEPARTMENT OF
STATE

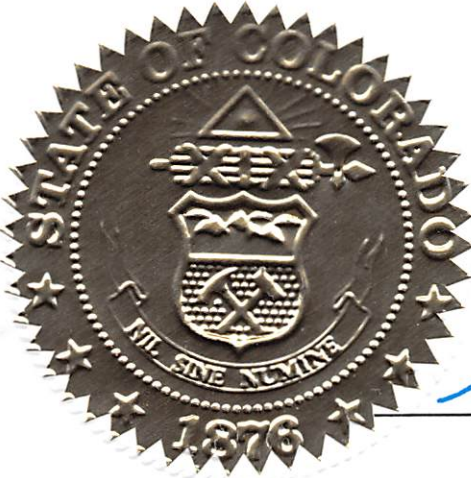
CERTIFICATE

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 #124 'School Board Open Meetings'".....

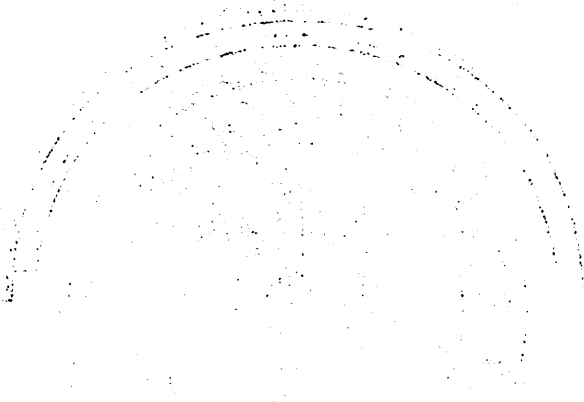
.....

..... 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 28th day of April, 2014.



A blue ink signature of Scott Gessler is written over a horizontal line.

SECRETARY OF STATE

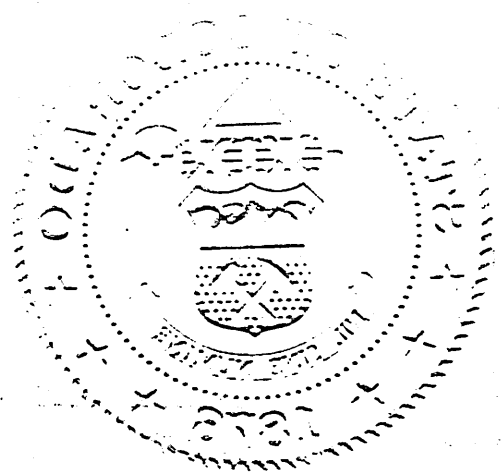


COLLEGIUM SOCIETATE

IN SOCIETATE
SOCIETATE

STACIUM

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APR 04 2014

INITIATIVE 2013-2014 #124 ORIGINAL TEXT

The School Board Transparency Act. An Initiated Statute.

Colorado Secretary of State

S.WARD 1:17 P.M.

SECTION 1. 24-6-402 (1) (a) and (4) (e), Colorado Revised Statutes, are amended to read:

24-6-402. Meetings - open to public. (1) For the purposes of this section:

(a) (I) "Local public body" means any board, committee, commission, authority, or other advisory, policy-making, rule-making, or formally constituted body of any political subdivision of the state and any public or private entity to which a political subdivision, or an official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff of the local public body.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (a), in order to assure school board transparency "local public body" shall include members of a board of education, school administration personnel, or a combination thereof who are involved in a meeting with a representative of employees at which a collective bargaining agreement is discussed.

(4) The members of a local public body subject to this part 4, upon the announcement by the local public body to the public of the topic for discussion in the executive session, including specific citation to the provision of this subsection (4) authorizing the body to meet in an executive session and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized, and the affirmative vote of two-thirds of the quorum present, after such announcement, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the following

matters; except that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action, except the review, approval, and amendment of the minutes of an executive session recorded pursuant to subparagraph (II) of paragraph (d.5) of subsection (2) of this section, shall occur at any executive session that is not open to the public:

(e) (I) Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators.

(II) The provisions of subparagraph (I) of this paragraph (e) shall not apply to a meeting of the members of a board of education of a school district:

(A) During which negotiations relating to collective bargaining, as defined in section 8-3-104 (3), C.R.S., are discussed; or

(B) During which negotiations for employment contracts, other than negotiations for an individual employee's contract, are discussed.

SECTION 2. 22-32-109.4, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

22-32-109.4. "Colorado School Collective Bargaining Agreement Sunshine Act" - board of education - specific duties. (4) Any meeting of a board of education at which a collective bargaining agreement is discussed shall be open to the public and any notice required by section 24-6-402(2) (c), C.R.S., shall be given prior to the meeting.

RECEIVED

APR 04 2014

Colorado Secretary of State

S. WARD 1:17 P.M.

INITIATIVE 2013-2014 #124 AMENDED TEXT

~~The School Board Transparency Act. An Initiative Statute.~~

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

SECTION 1. 24-6-402 (1) (a) and (4) (e), Colorado Revised Statutes, are amended to read:

24-6-402. Meetings - open to public. (1) For the purposes of this section:

(a) (I) "Local public body" means any board, committee, commission, authority, or other advisory, policy-making, rule-making, or formally constituted body of any political subdivision of the state and any public or private entity to which a political subdivision, or an official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff of the local public body.

(II) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (A), IN ORDER TO ASSURE SCHOOL BOARD TRANSPARENCY "LOCAL PUBLIC BODY" SHALL INCLUDE MEMBERS OF A BOARD OF EDUCATION, SCHOOL ADMINISTRATION PERSONNEL, OR A COMBINATION THEREOF WHO ARE INVOLVED IN A MEETING WITH A REPRESENTATIVE OF EMPLOYEES AT WHICH A COLLECTIVE BARGAINING AGREEMENT IS DISCUSSED.

(4) The members of a local public body subject to this part 4, upon the announcement by the local public body to the public of the topic for discussion in the executive session, including specific citation to the provision of this subsection (4) authorizing the body to meet in an executive session and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized, and the affirmative vote of two-thirds of

the quorum present, after such announcement, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the following matters; except that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action, except the review, approval, and amendment of the minutes of an executive session recorded pursuant to subparagraph (II) of paragraph (d.5) of subsection (2) of this section, shall occur at any executive session that is not open to the public:

(e) (I) Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators.

(II) THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (E) SHALL NOT APPLY TO A MEETING OF THE MEMBERS OF A BOARD OF EDUCATION OF A SCHOOL DISTRICT:

(A) DURING WHICH NEGOTIATIONS RELATING TO COLLECTIVE BARGAINING, AS DEFINED IN SECTION 8-3-104 (3), C.R.S., ARE DISCUSSED; OR

(B) DURING WHICH NEGOTIATIONS FOR EMPLOYMENT CONTRACTS, OTHER THAN NEGOTIATIONS FOR AN INDIVIDUAL EMPLOYEE'S CONTRACT, ARE DISCUSSED.

SECTION 2. 22-32-109.4, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

22-32-109.4. "Colorado School Collective Bargaining Agreement Sunshine Act" - board of education - specific duties. (4) ANY MEETING OF A BOARD OF EDUCATION AT WHICH A COLLECTIVE BARGAINING AGREEMENT IS DISCUSSED SHALL BE

OPEN TO THE PUBLIC AND ANY NOTICE REQUIRED BY SECTION 24-6-402(2) (C), C.R.S.,
SHALL BE GIVEN PRIOR TO THE MEETING.

INITIATIVE 2013-2014 #124 FINAL TEXT

RECEIVED

APR 04 2014

Colorado Secretary of State
S.WARD 1:17 P.M.

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

SECTION 1. 24-6-402 (1) (a) and (4) (e), Colorado Revised Statutes, are amended to read:

24-6-402. Meetings - open to public. (1) For the purposes of this section:

(a) (I) "Local public body" means any board, committee, commission, authority, or other advisory, policy-making, rule-making, or formally constituted body of any political subdivision of the state and any public or private entity to which a political subdivision, or an official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff of the local public body.

(II) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (A), IN ORDER TO ASSURE SCHOOL BOARD TRANSPARENCY "LOCAL PUBLIC BODY" SHALL INCLUDE MEMBERS OF A BOARD OF EDUCATION, SCHOOL ADMINISTRATION PERSONNEL, OR A COMBINATION THEREOF WHO ARE INVOLVED IN A MEETING WITH A REPRESENTATIVE OF EMPLOYEES AT WHICH A COLLECTIVE BARGAINING AGREEMENT IS DISCUSSED.

(4) The members of a local public body subject to this part 4, upon the announcement by the local public body to the public of the topic for discussion in the executive session, including specific citation to the provision of this subsection (4) authorizing the body to meet in an executive session and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized, and the affirmative vote of two-thirds of

the quorum present, after such announcement, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the following matters; except that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action, except the review, approval, and amendment of the minutes of an executive session recorded pursuant to subparagraph (II) of paragraph (d.5) of subsection (2) of this section, shall occur at any executive session that is not open to the public:

(e) (I) Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators.

(II) THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (E) SHALL NOT APPLY TO A MEETING OF THE MEMBERS OF A BOARD OF EDUCATION OF A SCHOOL DISTRICT:

(A) DURING WHICH NEGOTIATIONS RELATING TO COLLECTIVE BARGAINING, AS DEFINED IN SECTION 8-3-104 (3), C.R.S., ARE DISCUSSED; OR

(B) DURING WHICH NEGOTIATIONS FOR EMPLOYMENT CONTRACTS, OTHER THAN NEGOTIATIONS FOR AN INDIVIDUAL EMPLOYEE'S CONTRACT, ARE DISCUSSED.

SECTION 2. 22-32-109.4, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

22-32-109.4. "Colorado School Collective Bargaining Agreement Sunshine Act" - board of education - specific duties. (4) ANY MEETING OF A BOARD OF EDUCATION AT WHICH A COLLECTIVE BARGAINING AGREEMENT IS DISCUSSED SHALL BE

OPEN TO THE PUBLIC AND ANY NOTICE REQUIRED BY SECTION 24-6-402(2) (C), C.R.S.,
SHALL BE GIVEN PRIOR TO THE MEETING.

Ballot Title Setting Board

Proposed Initiative 2013-2014 #124¹

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

A change to the Colorado Revised Statutes requiring any meeting of a board of education, or any meeting between representatives of a school district and representatives of employees, at which a collective bargaining agreement is discussed to be open to the public.

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

Shall there be a change to the Colorado Revised Statutes requiring any meeting of a board of education, or any meeting between representatives of a school district and representatives of employees, at which a collective bargaining agreement is discussed to be open to the public?

Hearing April 16, 2014:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 4:34 p.m.

¹ Unofficially captioned “School Board Open Meetings” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

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APR 23 2014

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Colorado Secretary of State
S. WARD 2:24 P.M.

Patricia S. Peters, Objector

vs.

Jon Caldera and Mike Kraus, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2013-2014 #124

Patricia S. Peters, 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 #124 ("School Board Open Meetings").

On April 16, 2014, the Board set the following ballot title and submission clause:

Shall there be a change to the Colorado Revised Statutes requiring any meeting of a board of education, or any meeting between representatives of a school district and representatives of employees, at which a collective bargaining agreement is discussed to be open to the public?

ADVISORY GROUNDS FOR RECONSIDERATION

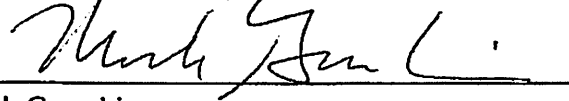
A. Contrary to the statutory requirements for a ballot title that is not confusing, not misleading, and reflective of the intent of the proponents, C.R.S. §§ 1-40-106, -107, the Board has erred by setting titles that do not reveal that the measure:

1. The title misstates the subject of the proposed measure which is to redefine "local public body" to include certain groupings of school district officials and an employee representative, which subjects those groupings to many more requirements than just holding meetings in a previously noticed public session.
2. The title misstates that this grouping becomes a "local public body" where there are "representatives" of employees rather than "a representative" in attendance.
3. The title misstates that this grouping becomes a "local public body" where there are "representatives of a school district" rather than "school administration personnel" in attendance.

4. The title incorrectly states that the measure applies to "a board of education" when the measure applies to any "members" of a board of education.
5. "Open to the public" is a political catchphrase.
6. The title fails to state that the measure expressly applies to negotiations for employment contracts.
7. The title fails to state that the measure expressly does not apply to negotiations for an individual employee's contract.
8. The title incorrectly states that the measure applies to "any meeting" of this "local public body" as all local public bodies are entitled, by law, to meet in executive session under certain statutorily enumerated circumstances.

RESPECTFULLY SUBMITTED this 23rd day of April, 2014.

RECHT KORNFELD, P.C.



Mark Grueskin

1600 Stout Street, Suite 1000

Denver, CO 80202

Phone: 303-573-1900

Email: mark@rechtkornfeld.com

Objector's Address:

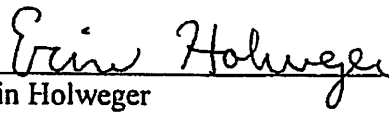
Patricia S. Peters
13293 Elizabeth Street
Thornton, CO 80241

CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2013-2014 #124** was sent this day, April 23, 2014, via first class U.S. mail, postage pre-paid to the proponents at:

Jon Caldera
13952 Denver West Pkwy.,
Bldg. 53, Suite 400
Golden, CO 80401

Mike Kraus
13952 Denver West Parkway
Bldg. 53, Suite 400
Golden, CO 80401


Erin Holweger

Ballot Title Setting Board

Proposed Initiative 2013-2014 #124¹

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

A change to the Colorado Revised Statutes requiring any meeting of a board of education, or any meeting between any representative of a school district and any representative of employees, at which a collective bargaining agreement is discussed to be open to the public.

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

Shall there be a change to the Colorado Revised Statutes requiring any meeting of a board of education, or any meeting between any representative of a school district and any representative of employees, at which a collective bargaining agreement is discussed to be open to the public?

Hearing April 16, 2014:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 4:34 p.m.

Hearing April 24, 2014:

Motion for Rehearing granted only to the extent that the Board made changes to the titles; denied in all other respects.

Hearing adjourned 4:35 p.m.

¹ Unofficially captioned “School Board Open Meetings” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.