

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2015-2016 #96 (“Requirements for Initiated Constitutional Amendments”)</p> <p><b>Petitioner: Timothy Markham</b> v. <b>Respondents: Greg Brophy and Dan Gibbs</b></p> <p><b>and</b></p> <p><b>Title Board: SUZANNE STAIERT; FREDERICK YARGER; and JASON GELENDER</b></p>	
<p>Attorney 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: <a href="mailto:mark@rklawpc.com">mark@rklawpc.com</a></p>	<p><b>Case No. 2016SA100</b></p>
<p><b>PETITIONER’S OPENING BRIEF ON PROPOSED INITIATIVE 2015-2016 #96</b></p>	

## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

Choose one:

It contains \_\_\_\_\_ words.

It does not exceed 30 pages.

The brief complies with C.A.R. 28(k).

For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record, not to an entire document, where the issue was raised and ruled on.

For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

*s/ Mark G. Grueskin* \_\_\_\_\_

Mark G. Grueskin

*Attorney for Petitioner*

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## **STATEMENT OF ISSUES PRESENTED**

Whether the Title Setting Board (“Title Board” or “Board”), erred in setting a ballot title that is unfair, misleading, and does not fairly and correctly express the true meaning of the Proposed Initiative, particularly in that:

1. The phrase included by the Title Board in the title set, “Making it more difficult to amend the Colorado constitution”, is a prohibited catch phrase and is misleading and inaccurate for voters, given the Respondents’ admission that the signature-gathering portion of the measure will have no effect on ballot qualification.
2. The title fails to describe that signature requirements per senate district will vary, even within the same election cycle, depending on the date the petition form has been approved for circulation.

## **STATEMENT OF THE CASE**

### **A. Statement of Facts.**

Proposed Initiative #96 would amend Section 1(4) of Article V of the Colorado constitution by adding a new subsection (2.5). This new subsection would require a petition for an initiated constitutional amendment to be signed by registered electors who reside in each state senate district in Colorado in an amount equal to at least two percent of the total registered electors in the senate district,

provided that the total number of signatures of registered electors on the petition at least equals the number of signatures currently required by Section 1.

For purposes of the new subsection (2.5), the number and boundaries of the senate districts and the number of registered electors in the senate districts must be those in effect at the time the form of the petition is approved for circulation.

Further, Initiative #96 would amend Section 1(4) of Article V such that in order for an initiated constitutional amendment to pass, the amendment would require approval by at least fifty-five percent of the votes cast in connection with that amendment. Section 1(4) of Article V of the Colorado constitution currently requires that an initiated constitutional amendment receive only a majority of the votes cast in order to be approved.

This amendment proposed by Initiative #96 would not, however, apply to an initiated constitutional amendment that is limited to repealing, wholly or partially, any provision of the Colorado constitution.

**B. Nature of the Case, Course of Proceedings, and Disposition Below.**

Greg Brophy and Dan Gibbs (hereafter “Proponents”) proposed Initiative 2015-2016 #96 (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 2, 2016 to establish the Proposed Initiative's single subject and set a title.

On March 9, 2016, Petitioner filed a Motion for Rehearing, alleging that #96 contained multiple subjects and the title set was misleading, incomplete, and prejudicial, and failed to reflect the complete intent of the Proponents and the central features of the Proposed Initiative. The rehearing was held on March 16, 2016, at which time the Title Board granted in part and denied in part the Motion for Rehearing. The Board set the following title:

Shall there be an amendment to the Colorado constitution making it more difficult to amend the Colorado constitution by requiring that any petition for a citizen-initiated constitutional amendment be signed by at least two percent of the registered electors who reside in each state senate district for the amendment to be placed on the ballot and increasing the percentage of votes needed to pass any proposed constitutional amendment from a majority to at least fifty-five percent of the votes cast, unless the proposed constitutional amendment only repeals, in whole or in part, any provision of the constitution?

The Board did not, however, cure certain remaining deficiencies that were raised at the rehearing, and Petitioner timely filed a petition for review before this Court pursuant to C.R.S. § 1-40-107(2).

## SUMMARY

The Proponents pushed for the phrase “making it more difficult to amend the constitution” for a reason: they had conducted thorough quantitative and qualitative public opinion research and found that it was important to the success of their Initiative #96. That phrase is a catch phrase, and when applied to the 2% of registered voters signature requirement in each State Senate district, is either factually incorrect or a matter of pure speculation. The conclusion is clear, given the materials the sponsors of this initiative published just prior to the Title Board hearing. Therefore, the “making it more difficult” language is misleading to voters.

Moreover, the Title Board omitted any reference to #96’s requirement that the 2% threshold changes, depending on the point in an election cycle that the petition form is approved. Voters should know that ballot measures considered at the same elections in the future will have different standards to meet in order to qualify for the ballot. The number of signatures to be required by Senate district is a material aspect of this ballot measure.

## LEGAL ARGUMENT

### **A. Standard of review; preservation of issue below.**

Generally, the Title Board is given wide latitude in employing its discretion when setting a ballot title. *In re Title, Ballot Title and Submission Clause, and*

*Summary for 2001-2012 No. 3*, 274 P.3d 562, 565 (Colo. 2012) (“#3”). The Board’s decision must be overturned where the titles are “insufficient, unfair, or misleading.” *Id.*

Specifically, a ballot title must be sufficiently clear and brief for voters to be able to understand the principal features of the measure being proposed. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-200 No. 258(A)*, 4 P.3d 1094, 1098 (Colo. 2000) (“#258(A)”). The Board’s chosen language for the titles falls short where it is not “fair, clear, accurate, and complete,” such that the resulting title is “insufficient, unfair, or misleading.” *In re Title, Ballot Title and Submission Clause for Initiative 2007-2008 #62*, 184 P.3d 52, 60 (Colo. 2008). Titles will be reversed “if they contain a material and significant omission, misstatement, or misrepresentation.” *In the Matter of the Title, Ballot Title & Submission Clause & Summary for 1997–98 No. 62*, 961 P.2d 1077, 1082 (Colo.1998).

Ballot titles may not contain a catch phrase, language that unfairly prejudices the proposal in its favor. #258(A) at 1100. An alleged catch phrase is evaluated “in the context of contemporary political debate,” *id.*, although the way in which contemporary political debate is evaluated has not been precisely defined by the Court.

Nonetheless, the Court has identified two types of prohibited catch phrases. One is the political slogan, a phrase that is “tailored for political campaigns – brief striking phrases for use in advertising or promotion.” *Id.* The other is the phrase that does not actually describe the legal change itself but instead reflects “words that work to a proposal’s favor without contributing to voter understanding.” *Id.* Such a catch phrase is not “merely descriptive of the proposal” but instead provokes political emotion or impedes voter understanding. *Id.*

The Initiative Proponents, and for that matter the Title Board, cannot claim that the title language is fair merely because it was taken from the initiative’s text. If the language used in the measure is a catch phrase, “the Title Board is not free to include this wording in the titles.” *Id.*

These issues were preserved for review and addressed in the Motion for Rehearing, appended to the certified documents from the Secretary’s Office that were filed with Markham’s Notice of Appeal, p. 2, at ¶II.B.1 and at ¶II.B.5.

**B. The title incorrectly used the catch phrase, “making it more difficult to amend the constitution.”**

**1. The title was misleading because of the use of this phrase.**

The title states, “Shall there be an amendment to the Colorado constitution making it more difficult to amend the Colorado constitution by requiring that any petition for a citizen-initiated constitutional amendment be signed by at least two

percent of the registered electors who reside in each state senate district for the amendment to be placed on the ballot....” The problematic portion of the title is the characterization that the measure “mak[es] it more difficult to amend the Colorado constitution.”

This phrase, “making it more difficult to amend the Colorado constitution,” was specifically advocated for inclusion in the title by the Proponents of #96 at their Title Board hearing on Initiative #93. In fact, it was a phrase they argued as essential, first in their description of the measure’s single subject and then in proposing specific language for the ballot title itself. Transcript of Hearing Before Title Setting Board on Proposed Initiative 2015-2016 #93 at 4:5-7 (“Our single subject is to make it more difficult to amend the Colorado Constitution”) and 6:12-17 (“what I would propose is a simpler, more user friendly measure that would say [‘]an amendment to the Colorado Constitution, making it more difficult to amend the Colorado Constitution by requiring at least 55 percent of the votes cast on a constitutional amendment for it to be approved...[’]”) (March 2, 2016). The ballot title for #96 was based upon the previous title hearings for Initiatives #93, #94, and #95, Transcript of Hearing Before Title Setting Board on Proposed Initiative 2015-2016 #96 at 2:16-18 (March 2, 2016), although #94 and #95 have since been withdrawn by Proponents.

Yet, Proponents also were able to fully describe the measure’s single subject without referring to “making it more difficult to amend the constitution.” As they stated to the Title Board about the single subject, “this one is – is slightly different because in addition to the 55 percent requirement it also includes the geographical distribution of signatures required on a petition.” *Id.* at 2:10-15.

Had the Title Board omitted the challenged phrase altogether, the ballot title would still completely and cogently inform voters of the nature of their measure:

Shall there be an amendment to the Colorado constitution ~~making it more difficult to amend the Colorado constitution by~~ requiring that any petition for a citizen-initiated constitutional amendment be signed by at least two percent of the registered electors who reside in each state senate district for the amendment to be placed on the ballot and increasing the percentage of votes needed to pass any proposed constitutional amendment from a majority to at least fifty-five percent of the votes cast....

That statement would have been fully informative of the actual legal change effected by #96. The characterization that this change would increase the difficulty of amending the constitution therefore was an unnecessary addition to the title.

The title’s qualitative characterization is directly reminiscent of #258(A). There, the initiative proponents built into their ballot measure language to address the speed and thoroughness with which their policy goal would be met. The initiative text stated, “All children in the state’s public schools shall be taught English **as rapidly and effectively as possible.**” #258(A), *supra*, 4 P.3d at 1104

(emphasis added). The Title Board adopted a ballot title that began, “An amendment to the Colorado Constitution concerning English language education, and in connection therewith, requiring all children in Colorado public schools to be taught English as rapidly and effectively as possible ....” *Id.* at 1100.

In #258(A) and here, the use of a superlative to exaggerate the impact of the text of an initiative (in the first initiative, making the prospect of English immersion for certain students seem more possible, and in the second measure, making potential amendments to the constitution seem more remote) was unnecessary to accurately and fully describe the proposed change to the law. The true matters before the voters were: (1) changes to the processes of teaching an identified class of public school students; and (2) increases to the minimum voting percentage in order to amend the constitution and geographical distribution of petitioning. Neither goal needed to be characterized in order to be communicated.

To their credit, the Proponents have not veiled the fact that they have tested the desirability of language about “making it more difficult to amend the constitution.” Specifically, they used “**thorough quantitative and qualitative research – through polling and focus groups** – to refine policy options and to help identify potential solutions that could be addressed by voters or the legislature.” *Project Overview: Building a Better Colorado Final Report*, Exhibit B, attached hereto, at 2 (emphasis added). The results of this research revealed

“consensus in three areas... [one being to] make it more difficult to amend the state constitution...” *Id.* Were it not clear enough, the sponsors of this measure also admitted that the “[f]indings from our work” included public backing that “We should make it more difficult to amend the state constitution.” *Id.* at 7. Thus, this phrase was included to “tip[] the substantive debate surrounding the issue to be submitted to the electorate.” #258(A), *supra*, 4 P.3d at 1100.

This phrase is unquestionably reflected “in the context of contemporary political debate.” *Id.* For example, in 2010 and 2011, the same group that backs the Proponents this year found a “consensus among the 1,400 people who attended meetings” they conducted statewide. *Building A Better Colorado Through Civic Engagement*, Exhibit A, attached hereto, at 2. That consensus included a key issue: **“the ballot process should be reformed to make it more difficult to amend the constitution.”** *Id.* (emphasis in original). The group’s process was methodical. In 2010, “these questions were posed to more than 1,200 community leaders from across the state in 12 locations,” including “Is it time to make it more difficult to amend the constitution?” *Id.* at 5. The answer to that question was that a super-majority should be required for constitutional amendments. *Id.*

Where title language “characterize[s] the substance of the Initiative” and does not, in and of itself, reflect the actual textual change to the law, the title can be misleading. *In the Matter of the Title, Ballot Title and Submission Clause, and*

*Summary Pertaining to the Proposed Initiative Designated "Government Business,"* 875 P.2d 871, 876 (Colo. 1994). The phrase at issue here is not "an element of the Initiative" or "a legal standard commonly used in the law." *In the Matter of the Title, Ballot Title and Submission Clause for 2007-2008 #62*, 184 P.3d 52, 61 (Colo. 2008). Instead, the title contains "superfluous blurbs in favor of" the initiative that "serve no purpose other than to promote voter support." Rene Galindo and Jami Vigil, *Language Restrictionism Revisited: The Case Against Colorado's 2000 Anti-Bilingual Education Initiative*, 7 Harv. Latino L.Rev. 27, 56-57 (2004). The Board is not at liberty to use "non-operative language from the initiative in the titles" when it serves as a catch phrase. *Id.* at 57. That the Board did so here requires reversal by the Court.

2. The title was inaccurate because of the use of this phrase.

This measure seeks to accomplish two goals: (1) increase the minimum vote, as a matter of the required percentage of "yes" votes to adopt a constitutional amendment; and (2) require that 2% of each senate district's registered voters sign a petition as part of the statewide number of signatures that is required. According to the text of #96, both provisions will "make it more difficult to amend this constitution." Proposed Article V, sec. 1(2.5), (4)(b).

The title represents that #96 aids in "making it more difficult to amend the Colorado constitution by requiring that any petition for a citizen-initiated

constitutional amendment be signed by at least two percent of the registered electors who reside in each state senate district for the amendment to be placed on the ballot.” This statement is either untrue or unfounded. In either case, it did not belong in the ballot title.

The Board was informed that Building a Better Colorado, the sponsoring organization for this measure, publicly stated that the geographic dispersion of petition signatures had no effect on the number of measures that make it to the ballot. One of the proposals this group was considering was to “[r]equire signatures for citizen-initiated amendments to the CONSTITUTION to be gathered from different geographic areas across the state (such as congressional or legislative districts) to increase consideration of statewide impact.” Building a Better Colorado, *Initiative Process*, Exhibit D, attached hereto, at 4.

Even the arguments in favor of this change, listed under “Pros,” do not mention that it will make amending the constitution more difficult. *Id.* at 5 (citing requiring “some measure of support from all areas of the state” and encouraging statutory initiatives). In fact, this document states that this element of the measure does *not* have the effect represented in the ballot title. One of the arguments against the measure, listed under “Cons,” states that this added requirement “[d]oesn’t impact which measures end up on the ballot, based on other states’ experiences.” *Id.* Thus, this acknowledgement that the geographic dispersion

requirement will not impact ballot qualification is not a subjective judgment; it is based on factual research.

Further, only two states are cited in this document as requiring dispersion of signature gathering, Florida and Nevada. *Id.* at 4. Those two states impose the signature dispersion requirement to be calculated at the congressional district level. *Id.* The factual analysis undertaken shows that Building a Better Colorado did not identify any state that, comparable to Initiative #96, required signature gathering in state senate districts. *Id.* at 7.

As such, either the Proponents knew that: (1) the ballot title was inconsistent with their factual research that showed that requiring signature gathering by district does not affect ballot qualification; or (2) there was no empirical experience with signature gathering by senate district. In either instance, there was no support for the assertion in the ballot title that this particular change would make it more difficult to amend the constitution.

Language of the titles that is incorrect cannot express the true intent and meaning of the initiative. Where the Board's titles stated an initiative eliminated the requirement that judges and justices be licensed attorneys but those provisions of law were not addressed by the initiative, the title had to be corrected "by striking the clause" that was in error. *In the Matter of the Title, Ballot Title and Submission Clause for 1999-00 245(b), 245(c), 245(d) and 245(e)*, 1 P.3d 720, 723 (Colo.

2000). “A title is unlawfully misleading if ‘voters ... could construe the titles’ in a way incorrectly representing the text of the initiative.” #3, *supra*, 274 P.3d at 570 (Hobbs, J., dissenting) , citing *In the Matter of the Title, Ballot Title & Submission Clause & Summary for 1999–2000 No. 215*, 3 P.3d 11, 16 (Colo. 2000). Here, the representation that this change to petitioning requirements will directly affect the constitutional amendment success rate is either untrue or entirely speculative. In either case, the Board erred by including this phrase in the title.

**C. The title incorrectly omitted any reference to the fact that the signature requirement will vary, even within the same election cycle.**

#96 applies the geographic distribution requirement for petition signatures based on “the number of registered electors in the senate districts... at the time the form of the petition has been approved for circulation.” Thus, the required number of signatures in any senate district will float, depending on the registered voter base at the time the petition form has been validated by the Secretary of State. Yet, the title does not inform voters that this requirement will be different for ballot measures qualifying for the same ballot.

In assessing whether an omission from the title is “material and significant,” the Supreme Court does not “construe the legal effect of the proposal as if it had been adopted” but it can characterize the proposal “insofar as necessary to conduct review for compliance with the constitutional and statutory provisions which apply

to the initiative process.” *No. 62, supra*, 961 P.2d at 1082. This standard is satisfied where the ballot title “informs voters” of the disputed provision and thereby “alerts concerned voters that they should read the complete language of ... the initiative in order to determine” the specific elements of the measure. *Id.* In other words, the Board need not address every provision, but it must summarize “the central features of the initiative for the voters.” *Id.* Nevertheless, “a material omission can create misleading titles.” # 258(A), *supra*, 4 P.3d at 1098.

The initiative process spans a period of more than eighteen months in any election year. The first Title Board meeting can be held on the first Wednesday in December after an election, and the last meeting is held no later than the third Wednesday in April of the following year. C.R.S. § 1-40-106(1). Petitions may be circulated for up to a six-month period and must be filed no later than three months prior to the election. C.R.S. § 1-40-108(1). Thus, an initiative that is circulated beginning in December of an odd-numbered year will be considered at the same election as one that is circulated beginning as late as June of the following year, upon completion of the Title Board process and, potentially, an appeal to this Court. C.R.S. § 1-40-107(5) (signature gathering “shall not begin until a final decision concerning the motion [for rehearing] is rendered by the title board or the Colorado supreme court”).

An omission is material and significant where voters do not understand the responsibilities to be assumed by or imposed on a governmental authority. For instance, in #258(a), *supra*, the ballot title did not inform voters that the initiative provided that no school district would be required to offer a bilingual education program. As a result, “voters could reasonably conclude” that school authorities would operate under the previous set of programmatic parameters relating to bilingual programs and opt-out possibilities. # 258(A), *supra*, 4 P.3d at 1099-1100. The result of this omission was voter confusion. *Id.*

This floating threshold that is placed on petition proponents is a significant and material aspect of this measure. Insofar as it speaks to the burdens placed on petitioners and on the Secretary of State who must determine if there has been compliance, it relates directly to the ability of “the voter to understand the effect of a yes or no vote on the measure.” *In the Matter of the Title, Ballot Title & Submission Clause & Summary for 2001-2002 No. 20 and No. 21*, 44 P.3d 213, 222 (Colo. 2002). The omission of such an aspect of the ballot measure is error on the part of the Title Board. *Id.*

## CONCLUSION

Because of the errors discussed in this Opening Brief, the title relating to this ballot measure should be returned to the Board.

Respectfully submitted this 14th day of April, 2016.

/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@rklawpc.com](mailto:mark@rklawpc.com)

**ATTORNEY FOR PETITIONER**

**CERTIFICATE OF SERVICE**

I, Erin Holweger, hereby affirm that a true and accurate copy of the **PETITIONER'S OPENING BRIEF** was sent this day, April 14, 2016, via ICCES to:

Grant Sullivan  
LeeAnn Morrill  
Matthew Grove  
Office of the Attorney General  
1300 Broadway, 6th Floor  
Denver, CO 80203

Dee Wisor, Esq.  
Butler Snow LLP  
1801 California Street  
Suite 5100  
Denver, CO 80202

Chris Forsyth  
3155 Ingalls St  
Wheat Ridge, CO 80214

*/s Erin Holweger*

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DATE FILED: April 14, 2016 3:50 PM

# STATE OF COLORADO

## DEPARTMENT OF STATE CERTIFICATE

I, **WAYNE W. WILLIAMS**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of Exhibit A and Exhibit B filed on behalf of objector Timothy Markham at the March 16, 2016 rehearing for Proposed Initiatives "2015-2016 #93, #94, #95, #96, and #97" .....

.....

**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 12<sup>th</sup> day of April, 2016.



*Wayne W. Williams*  
\_\_\_\_\_  
SECRETARY OF STATE

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**FORUM**

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**A**



## Building a Prosperous Colorado

Colorado's Future is a bipartisan group of community leaders whose aim is to create a prosperous economic future for the state of Colorado.

In 2005, the University of Denver's Economic Futures Panel convened to examine the state's fiscal structure. Over the course of its study, the panel identified four conditions to create a sound economic future, and improved quality of life. These include:

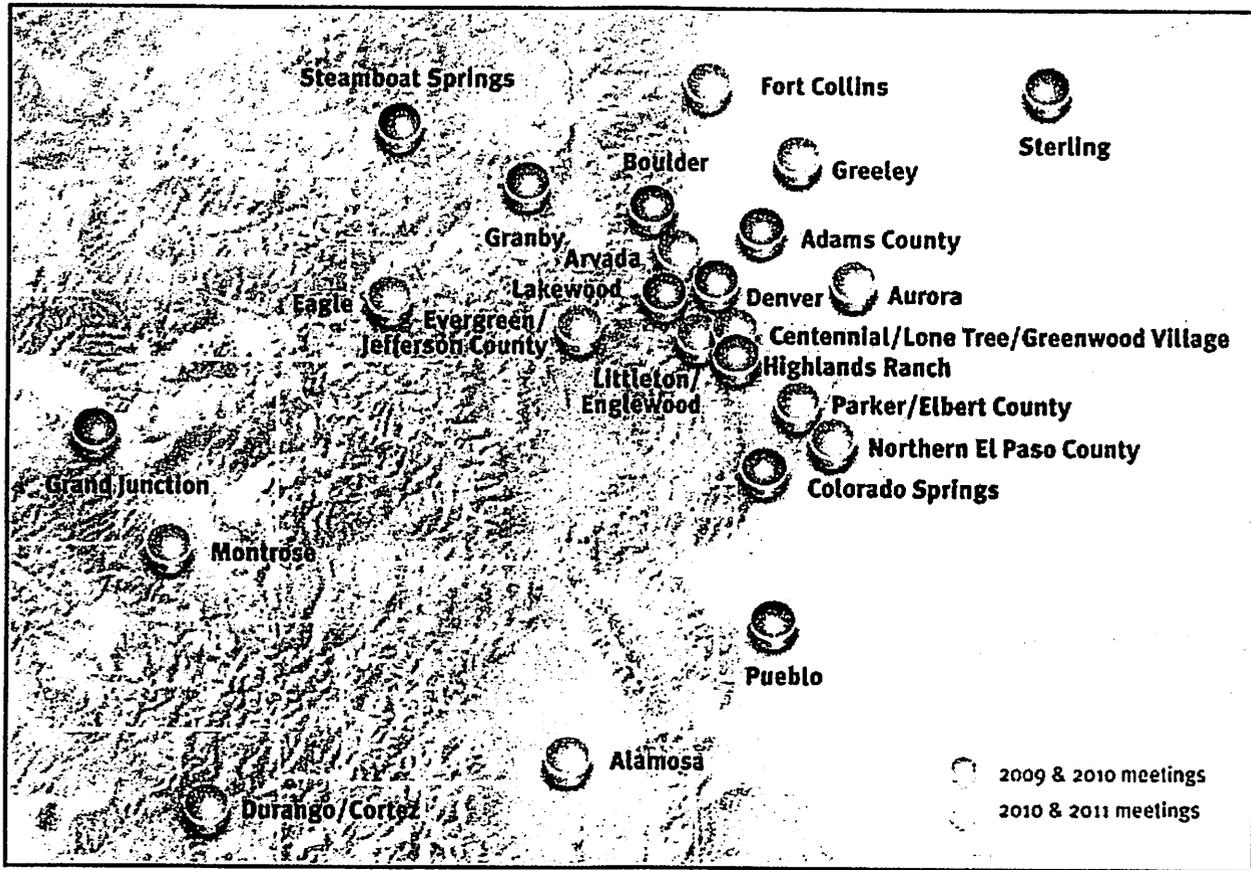
- An informed, flexible process for making public decisions
- A strong and effective system of representative government
- A renewal of public trust through increased government accountability
- A competitive fiscal policy based on information, shaped by an investment perspective and grounded in equity

In 2007, Colorado's Future organized to implement policy that supports these principles, with an initial emphasis on constitutional reform. Organizers recognized how recent changes to the state constitution have weakened representative government.

Over the last two years, Colorado's Future organizers have traveled across the state to identify civic leaders in their communities and engage them in discussions of these public policy challenges. Participants were subsequently asked to develop a consensus solution for the long-term betterment of Colorado. The consensus among the 1,400 who attended meetings was clear: **While important to retain citizen initiatives to change statute, the ballot process should be reformed to make it more difficult to amend the constitution.**

This consensus led to the introduction of this year's Senate Concurrent Resolution 11-001; a referred measure that would ask voters to protect the Colorado Constitution.

Colorado's Future is committed to continuing this critical conversation with community leaders and activists throughout the state. Part of this conversation will occur during 12 additional Colorado's Future-sponsored Civic Engagement meetings that will be held across the state in 2011, bringing leaders of all interests and backgrounds together to seek input and support.



Supporters across the spectrum recognize that this is not about partisan politics, it's about good governance. Making fiscal policy by initiative is a process in which oversimplification and under-analysis are the established norms, where conflicting policies and unintended consequences are the proven outcomes. Unless the structural problems in Colorado's government are addressed, dealing with urgent fiscal problems will be nearly impossible.

It's time to move beyond patchwork government and adopt fundamental reforms to help ensure Colorado's future economic vitality.

The success of Colorado's Future civic engagement meetings was made possible by its funders and sponsors including The Colorado Health Foundation, The Rose Community Foundation and the Institute on the Common Good. Since 1998, the Institute on the Common Good at Regis University has dedicated itself to programs aimed at changing the world one dialogue at a time, operating under the simple theory that through dialogue and trust building, major social change can occur. Neither liberal nor conservative in its posture, the Institute operates on the belief that a healthy society is committed to the welfare of all its members, especially those without a voice, suggesting a balance that avoids the extremes of exclusive individualism or totalitarianism.

The Institute supports a variety of initiatives that seek to increase citizen engagement in community issues and allows individuals to actively deliberate together to choose a variety of alternative paths.

## Colorado's Direct Democracy: A Historical Overview

Just about every American child is taught that the rallying shout of our founding forefathers, while dumping tea into Boston Harbor, was "No taxation without representation!" The framers of the United States Constitution subsequently struggled and debated whether the U.S. should be governed by direct democracy or representative government. They ultimately decided on the latter.

As the country expanded westward, with the help of the railroads and their powerful owners, citizens in states west of the Mississippi -- including Colorado -- realized the influence that industry's special interests exerted over government. In the latter part of the 19th century, citizens began to question the wisdom of a pure representative democracy. The result was a movement to allow voters to enact laws directly via the ballot initiative process, which was formally adopted in this state in 1910.

Since then, Colorado has in place a hybrid model of state government, combining representative democracy with direct democracy. Laws enacted by the general citizenry can either be statutory or written directly into the constitution.

In early practice, the citizen initiative process was used to implement social policies, including an eight-hour workday for miners and women (passed in 1912) and to ensure for the care and treatment of the mentally ill (passed in 1916). Both of these measures were passed as statutes.

By contrast, Coloradans have been -- at least until recently -- fairly judicious when considering changes to the state constitution. In the 88 years between 1876 and 1964, voters approved 73 measures to the state's constitution.

Traditionally, voters largely left matters involving finances and the state's budget in the hands of their elected officials in the state legislature and governor's office. But beginning in 1982 and continuing over the next two decades, the citizen's initiative process has been used to adopt three substantial provisions with tremendous impact to Colorado's budget.

These initiatives, when presented individually, proved popular with voters. But combined as laws within the state constitution, they demonstrate a growing tension between representative government and direct democracy.

### Is it Time to Change The Process?

The call for a citizen's initiative process first appeared on the ballot 100 years ago, and the ability to allow citizens to enact laws directly is now ingrained in Colorado politics. Since the process has marked its centennial year, it seems appropriate that Coloradans revisit the issue of the way their state is governed in the 21st century.

Colorado is one of 20 states to retain the use of its original constitution, which was adopted in 1876. In just the nine years between 1994 and 2003, the number of constitutional amendments increased 18 percent, according to a 2007 study by the University of Denver Strategic Issues Panel.

The increasing size, scope, and age of Colorado’s constitution has prompted these questions:

- How do the initiatives interact with one another?
- How have they have affected the role of elected officials and government in Colorado?
- Is it time to make it more difficult to amend the constitution?



In 2010, these questions were posed to more than 1,200 community leaders from across the state in 12 locations as part of Phase I of the Colorado’s Future Civic Engagement Project.

These community leaders -- from Steamboat Springs to Sterling and Colorado Springs to Boulder -- gathered to discuss the citizens initiative process and its resulting conflicts, and came to consensus on a series of recommendations for reform.

Eighty percent of the participants concluded that the current ballot initiative process is problematic; the same percentage affirmed their belief the citizen initiative process should be retained, but amended.

The following recommendations secured at least 75 percent support at the Civic Engagement Meetings:

1. The financial disclosure requirements for ballot initiative campaigns should be just as strict as the requirements for candidate campaigns.
2. Petitioners should be required to collect signatures from around the state, not concentrated in high-population areas.
3. Constitutional amendments should require more signatures to be placed on the ballot than statutory amendments.
4. Constitutional amendments should be required to secure a super-majority of votes; statutory amendments should continue to be adopted with a simple majority. Anything that’s already in the constitution could be amended out with a simple majority vote.
5. Ballot language should be clear and concise (readable at an 8th grade level).
6. A Constitutional Review Commission should be formed to meet periodically to determine and refer corrections on conflicting provisions to voters.



In short, civic leaders support the initiative process, but maintain that it should be more difficult to amend the constitution. They believe the language of citizen-driven initiatives ought to be clearly presented to voters and that their sponsors should be required full transparency as to who is financially supporting their efforts. A bill was passed in 2010 that will require increased disclosure from proponents of initiatives.

These series of meetings with over 1,200 Colorado community and civic leaders resulted in two measures that were referred to the state legislature with hopes they would be placed on the 2010 ballot. SCR 01 recommended that a Constitutional Review Commission be established (#6 above), and SCR 03 made it more difficult to amend the constitution, requiring that signatures be gathered in each of Colorado's seven Congressional Districts and that new constitutional amendments secure a super-majority (60 percent) of votes (#3 and #5 above). Both measures were heard in the State Senate, but not in the House of Representatives.

Based on feedback from both the civic leaders and the legislators, it was agreed that Colorado's Future would pursue some form of constitutional reform again in 2011. If passed by two-thirds of the Legislature, this measure would appear on the 2012 ballot as a referred measure -- commonly known as a referendum.

## **Role of State and Local Governments**

Taxes in Colorado are generally divided between four entities: the State of Colorado; the county in which people reside; the city or municipality in which they reside; and special districts designed to provide a wide array of services in selected geographical areas.

Over the last two decades Coloradans have amended the state constitution to reduce taxes and maintain a lean government. Voters also adopted a required increase in spending on K-12 education. Services that were once mainly funded by local taxes, such as school districts, are now funded primarily by the state.

## **What is in the State Budget?**

Setting the state's budget is a collaborative effort between the Legislature and the Executive Branch (the governor). Unlike the Federal Government, Colorado's constitution requires a balanced budget. Each year the governor initiates the process, outlining the executive branch's priorities and programs to the legislative Joint Budget Committee (JBC).

The JBC spends the next several months reviewing the proposal, developing and ultimately passing what is referred to as the "Long Bill," or the annual budget.

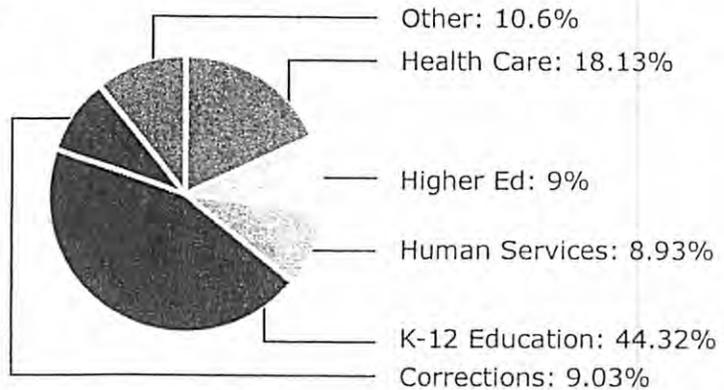
Like all bills, the budget must be approved and signed by the governor. The governor may veto certain line items, but is prohibited from amending any of its appropriations.

In 2010, the state budget was almost \$7 billion, which does not include funds from the federal government.

# State General Fund 2010-11

## State Spending

- K-12 Education 44.32%
- Health Care 18.13%
- Other \* 10.6%
- Corrections 9.03%
- Higher Ed 9%
- Human Services 8.93%

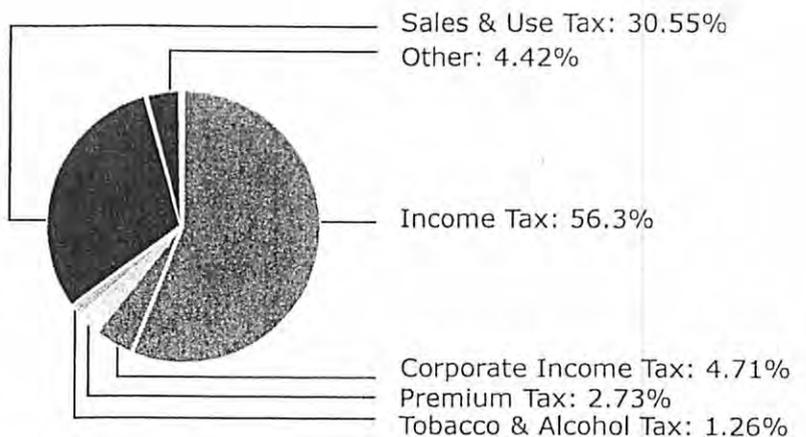


\* State Patrol, Legislative Services, Governor’s Office, etc.

Note: The Colorado Department of Transportation (CDOT) does not receive an appropriation from the state’s General Fund as part of the operating fund. CDOT is primarily funded by federal funds, the state gasoline tax, and other fees.

## State Revenues

- Income Tax 56.3%
- Sales and Use Tax 30.55%
- Corporate Income Tax 4.71%
- Other 4.42%
- Premium Tax 2.73%
- Tobacco & Alcohol Tax 1.26%



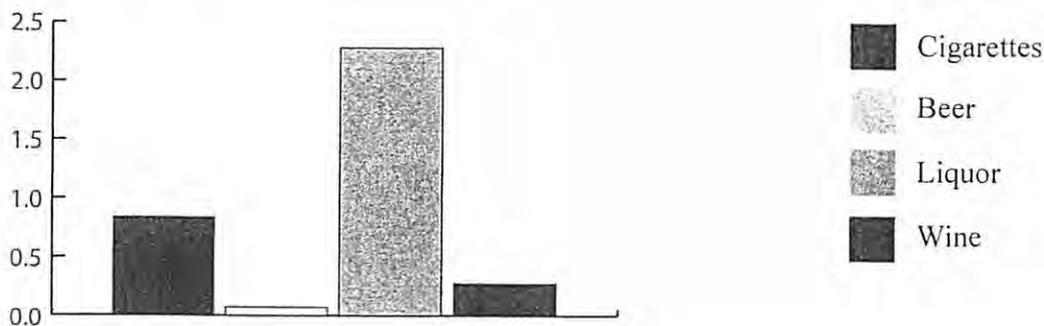
**Individual:** Individual income taxes are based on a flat rate of 4.63 percent of federally adjusted taxable income. Colorado ranks 29th of 43 states for state income tax, paying \$25.41 for every \$1,000 of personal income.

**Corporate:** In most cases, states that tax individual income also tax the income of corporations. Colorado’s tax, at a flat rate of 4.63 percent, is the 41st lowest of 46 states where this tax is imposed.

**Sales & Use:** Colorado’s statewide sales (and use) tax rate is 2.9 percent, ranking 44th among the 50 states. Local governments affix their own sales taxes, so the amount consumers pay at the cash register is usually closer to 7 or 8 percent.

**Alcohol & Tobacco Tax:** Colorado taxes cigarettes, other tobacco products, liquor, wine and beer. In Fiscal Year 2010-11, these taxes generated \$88.6 million in General Fund Revenue (\$53 million from tobacco and \$35.6 million from alcohol).

**Colorado’s ‘Sin’ Taxes**



\$0.84 per pack of cigarettes (ranking 34th among states)

40% tax on other tobacco products (e.g. cigars and chewing tobacco)

\$0.08 per gallon of beer

\$2.28 per gallon of liquor

\$0.28 per gallon of wine

(Overall Colorado’s liquor tax rate ranks 44th among the states.)

**Money from Tobacco: Where it Goes**

In 2004, Colorado voters approved Amendment 35, which implemented a \$0.64 increase per pack of cigarettes (totaling \$0.84 per pack) and a 20 percent increase on other tobacco products (totaling 40 percent on the manufactured price.)

At the time the tax increase temporarily brought Colorado in line with the national average for tobacco taxes. This additional revenue does not typically go to the General Fund. Voters earmarked the money to pay for public health programs and healthcare services for the poor and disabled. The only exception is that in a state of fiscal emergency, as officially declared by the legislature by a two-thirds vote, the monies can be redirected to the General Fund. This has happened twice, in Fiscal Year 2009-2010 and Fiscal Year 2010-2011.

## Money From Gas: Where it Goes

**Gas Tax:** Colorado's gas tax has been 22 cents per gallon since January 1991. Diesel fuel tax is 20.5 cents. Couple that with the 18 cents federal gas tax, and 40 cents per gallon is the total you're paying in taxes. The money is placed into the state highway users fund and is distributed as follows:

65 percent goes to the state highway system.

26 percent is distributed among Colorado's counties based on a formula incorporating the lane miles and vehicle registrations in them.

9 percent is distributed among cities, based on a city's street mileage and vehicle registrations.

**Fees:** SB 108 (FASTER) was passed by the Legislature and signed by Gov. Bill Ritter in 2009. The bill increased fines, fees, and surcharges assessed at the time a vehicle is registered in order to pay for transportation projects - \$100 million to upgrade 125 bridges deemed deficient and in poor condition, and \$150 million for roadway safety.

## Oil & Natural Gas Taxes

Colorado's severance tax is determined by the value of the natural resource where it is extracted. More than 90 percent of the severance tax revenue is collected from oil and gas (mostly all natural gas).

## Property Taxes

Colorado's 64 counties are primarily funded by property taxes, which can be pretty complicated. Here's how it works: Take the value of the property, multiply it by the "assessment rate" -- which is the portion of the value of the property that gets taxes. Then, multiply that by the "mill levy," and divide by 1,000.

Consider a house worth \$200,000, with a 7.96 percent assessment rate and a total mill levy of 80. The property tax owed would be:

$\$200,000 \text{ times } .0796 \text{ times } 80, \text{ divided by } 1000 = \$1,280 \text{ annual property taxes due.}$   
Some counties receive some revenue from sales tax but this rate varies from county to county. Most counties rely on property tax to provide services to residents and the general operating budget for the county.

## Municipalities and the Magic of Sales Tax

While counties count on property taxes for the bulk of their revenue, municipalities rely on sales tax. A sales tax is a consumption tax charged at the point of purchase for certain goods and services. Cities can augment their revenue with a myriad of other taxes -- including lodging and occupational privilege taxes -- but the majority of a municipality's general operating fund comes from sales tax. This dependence on sales tax results in challenging times during economic downturns, when consumers cut back in spending.

### Colorado's 1,300 Special Districts

Special districts are just that – special units of local government established by the residents of an area to provide some service not provided by the county or city. In Colorado, 1,300 special districts provide services, including library, fire, water, library, sanitation, cultural and transportation.

Special districts must be approved by voters and are generally governed by their own elected board of directors. In rare cases, board members may be appointed by a governing authority.

Below is a chart of the total rate of sales and special district taxes for residents of the City of Aurora, which comprises three different counties. Depending on the county they live in, city residents pay different tax rates. These rates were effective as of 1/1/2010.

Sales Tax Rate	Arapahoe County	Adams County	Douglas County
City of Aurora	3.75%	3.75%	3.75%
State of Colorado	2.90%	2.90%	2.90%
RTD	1.00%	1.00%	1.00%
Cultural	0.10%	0.10%	0.10%
Sports Stadium	0.10%	0.10%	0.10%
County	0.25%	0.75%	1.00%
<b>Total</b>	<b>8.10%</b>	<b>8.60%</b>	<b>8.85%</b>

## Examples of Special Districts:

**Regional Transportation Districts (RTA)** As of Jan. 1, 2010 there are four RTA's in Colorado; The **Pikes Peak Rural Transportation Authority** includes the cities of Colorado Springs, Green Mountain Falls, Manitou Springs and all of unincorporated El Paso County; the **Gunnison Valley RTA** has a sales tax of 0.6 percent in Gunnison County with the exception of the cities of Marble, Ohio, Pitkin and Somerset; **and the Regional Transportation District (RTD), which serves the Denver Metro Area and levies a sales/use tax of 1 percent.**

**Scientific & Cultural Facilities District (SCFD)** - A sales/use tax of 0.1 percent for the Scientific and Cultural Facilities District applies to all sales that are also subject to the RTD tax, plus the remainder of Adams and Arapahoe, as well as all of Douglas County except the towns of Castle Rock and Larkspur. This tax funds cultural institutions such as the Museum of Natural History and the Denver Art Museum.

**Health District of Northern Larimer County** provides prescription assistance, mental health, dental, preventive and health planning services for residents of Northern Larimer County.

**High Plains Library District** provides library services to residents of Weld County and the Town of Erie.

**Football Stadium District (FD or FTBL)** - A sales/use tax of 0.1 percent for the Football Stadium District applies to all sales that are subject to the RTD tax and additional portions of Douglas County and Park Meadows Mall. The football district replaced the baseball district (BD) effective Jan. 1, 2001. Voters made the choice to pay for and help build the Denver Broncos' new stadium, Invesco Field, through the football district sales tax.

## Paying for Public Schools

In Colorado, public schools are funded by local property taxes (about 40 percent) and by state sales and state income tax (60 percent).

In 1994, a legal requirement known as "equalization" was implemented by the state School Finance Act to compensate poorer districts with low property taxes, providing the same levels of per-pupil funding as wealthier school districts.

Prior to the passage of the Gallagher Amendment, the Taxpayer's Bill of Rights, Amendment 23, and the "equalization" requirement, local property taxes funded 60 percent of public education in Colorado, while the state paid the remaining 40 percent. In budget year 2009-2010, more than \$5.6 billion was directed by the state to public schools. The breakdown includes: State taxes (\$3.5 billion), vehicle registration taxes (\$148 million), and local property taxes (\$1.8 billion).

Initially, funding for a school district's "Total Program" is provided first by property taxes. But if there is not enough money to fully fund the "Total Program," state monies supplement the district. In budget year 2010-2011, the state is projected to range from \$0 per pupil (these districts pay for their schools with property taxes) to \$11,350.71 per pupil (0 percent to 96.5 percent respectively, of total program). The average amount the state provides per pupil is \$4,297.06.

## Property Taxes and School Funding

Each school district must impose a property tax levy to finance its local share of "Total Program." A school district's ability to raise money from property taxes varies widely as a result of different tax bases. All local property tax revenues stay within that district. Here is how property tax relates to school funding:

### How does the county assessor determine the value of the property?

The assessed valuation is based on a percentage of the property's actual value. For example, in budget year 2010-2011, residential property is expected to have an assessed valuation equal to 7.96 percent of its actual value.

### What is a mill?

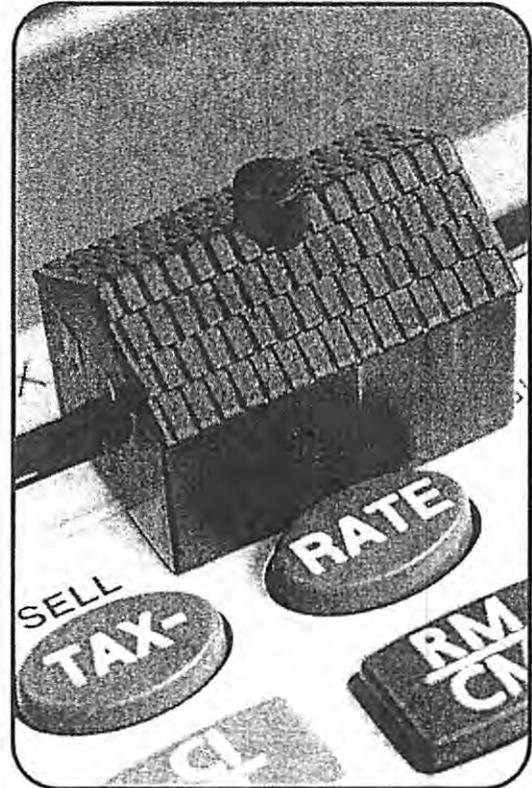
One mill of tax is the same as one-tenth of one percent (.001).

### What is the mill levy freeze that passed in 2007?

Beginning in Fiscal Year 2007-2008, the Colorado General Assembly passed legislation to stabilize school district mill levies. The legislation caps mill levies at 27 mills and freezes mill levies for districts with mill levies of 27 mills or less. This legislation applies to the "Total Program" mill levy only.

It does not affect override, bond, special building and technology, full-day kindergarten excess cost, or transportation mill levies. This mill levy cap/freeze does not apply to districts that have not held a successful election to lift TABOR restrictions.

It is important to note that schools are governed locally, and local control of schools is considered a pillar of education in Colorado. However, as state funding for schools increases overall, it raises the question of local control versus state control over policies related to education and who should govern our schools.



# The Big Three: Constitutional Budget Requirements

## 1. The Gallagher Amendment

Passed by voters in 1982, the Gallagher Amendment established that business property owners pay 55 percent of total statewide property taxes, while residential property owners pay 45 percent.

To accomplish this, assessment rates (which until that point had been fixed at 30 percent for all types of property) were locked at 29 percent for commercial and initially set at 21 percent for residential.

Over the past 20 years, the value of homes increased much faster than values of commercial property. Since the 29 percent was locked in, the only way to accommodate the rise in home values while maintaining the 55:45 ratio in total property taxes paid was to drop the residential assessment rate. As a result, the residential assessment rate continues to be less than 8 percent.

Note: When Gallagher was passed in 1982, the residential rate was 21 percent.

What is the upshot of Gallagher? It depends on your perspective.

**Homeowners like their low property taxes.** But, many business owners think Gallagher is unfair to business owners because it shifts a disproportionate amount of the tax burden to them. It is ironic that, as the value of residential properties rises, homeowners pay less, while the owner of a commercial property with a decreasing value pays considerably more.

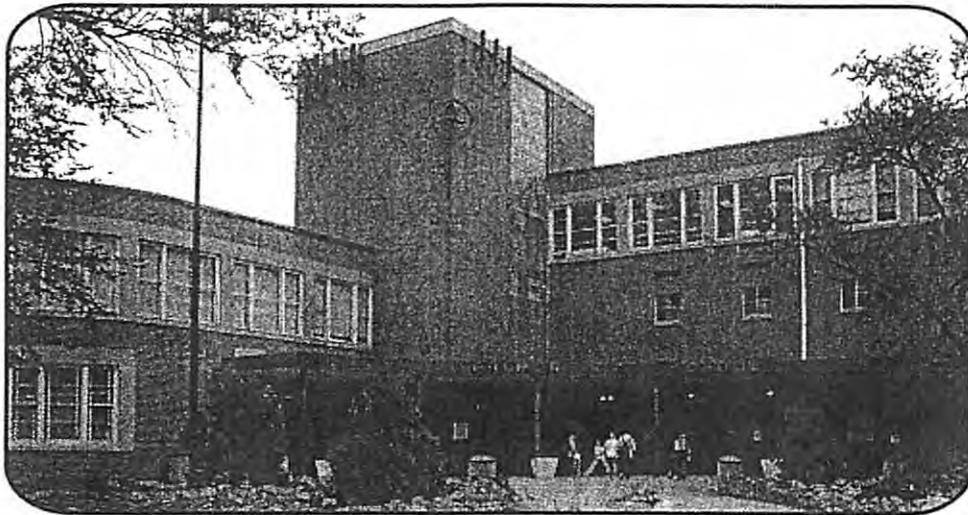
**Local government:** Property tax revenues are shrinking due to the slide in residential property tax rates.

**State government:** Colorado law requires the state to make up losses in public school funding. Thus, if local property taxes prove inadequate, state government must make up the difference in order to ensure per-pupil equity. This requirement, combined with Amendment 23, has resulted in the state picking up even a greater share of K-12 education -- which has resulted in cuts to other programs, like higher education and health care.

## 2. Amendment 23: Funding Public Education

Amendment 23, passed in 2000, required an increase in spending for K-12 education. It had three primary components:

- Increased spending for K-12 by inflation plus 1 percent through 2010 and at least keeping pace with inflation thereafter.
- Established the State Education Fund that earmarks 7 percent of state income revenue for the fund. Money comes from a surplus when available, thereby reducing the refunds to taxpayers. However, the fund may be depleted during times of economic hardship and redirected by the legislature for other purposes.
- The “Maintenance of Effort” clause requires General Fund spending on K-12 to be increased by 5 percent annually. However, in a “down” economy this clause is waived. This provision was added to ensure that the legislature will not substitute State Education Fund dollars for K-12’s annual share of the General Fund.



## 3. The 1992 Taxpayer’s Bill of Rights (TABOR)

The Taxpayer’s Bill of Rights, referred to as TABOR, is a complex constitutional amendment that has dominated the state’s fiscal landscape since it was passed by voters in 1992. The purpose of the amendment was designed to:

- 1) Limit the growth of government; and
- 2) Require all tax increases to be voter-approved.



## The TABOR Limit

One common misperception about TABOR is that it limits spending, but this is not the case. TABOR limits the total amount the state can accept as revenue from almost any revenue source including income tax, sales tax, college tuition etc. Year-to-year increases in the tax revenue the state collects cannot exceed the rates of inflation and population growth combined. This amount is called the TABOR revenue ceiling, or the TABOR limit. Any amount Colorado collects beyond this revenue ceiling must be refunded to taxpayers unless they vote to let the state keep the excess. This practice -- to allow the government to keep the excess to use for services -- is often referred to as "de-Brucing" a reference to TABOR's author Douglas Bruce.

Over the past several years there have been changes to several elements of TABOR, most notably the passage of Referendum C in 2005, and the repeal of the Arveschoug-Bird Amendment in 2009.

Approved by voters in 2005, Referendum C consisted of two major components:

1. It let the state retain all the revenue it collected for five years (FY 2005-2006 through FY 2009-2010) regardless of the TABOR limit. This is sometimes referred to as a "time-out" from TABOR. No matter how the economy was performing, there were no refunds given to taxpayers during this time.
2. It allows the state government to keep all revenues up to a new state revenue cap.

What does this mean in plain English?

Initially, TABOR based the amount of revenue that the state could keep to the amount taken in the year before, or the actual revenues collected, whichever is lower. For example, from 2001-2003, state tax revenues decreased due to a recession. By 2004, the economy bounced back. Tax revenues were up, but TABOR dictated that the state was forced to base its revenue limit on the previous year, when revenue was down by more than \$1 billion. Recessionary spending levels were locked in, so that even when the state had more money it was still on the same diet it was on during poor economic times.

Referendum C modified this TABOR provision, established that for Fiscal Year 2010-2011 and beyond, the state's revenue limit would be based on the prior year's limit, "regardless of actual revenue's collected."

In 2010, Senate Bill 228 repealed a budget formula known as Arveshoug-Bird (named after the bill's sponsors) that automatically transferred revenue out of the state's General Fund each year for transportation and state building construction projects.

## Single Subject Amendment

The Single-Subject Act, also known as Referendum A, was placed on the November 1994 ballot by the Colorado State Legislature. Voters approved the measure, with 65.7 percent in favor. The Single Subject Amendment applies to bills introduced in the Legislature as well as to citizen initiatives. The impetus for the single-subject rule was to prevent complex and multi-faceted initiatives from being placed on the ballot and to ensure that the substance of the bill or initiative is accurately reflected in the title.

## Gallagher Meets TABOR

When the Gallagher Amendment was approved in 1982, voters were inspired that homeowners' taxes would be kept low, and businesses would pay a fair share of property taxes. For the first 10 years, Gallagher worked as intended, lowering homeowners' tax assessment (the percent of property value that is subject to tax) while maintaining consistent revenue levels for local government. This was accomplished by letting local property tax rates (called mill levies) "float" up and down as needed from one year to the next.

However, the passage of TABOR in 1992 prevented local governments from floating the mill levy upward without a vote of the people. As home values increased, local governments began to reach and exceed their TABOR revenue limits. Remember, TABOR's provisions apply to all governmental entities – including counties and cities. TABOR required mill levies to be lowered resulting in less property tax revenue - i.e. less money available for institutions like school districts and county government that rely on property tax.

## Gallagher Meets Amendment 23

Amendment 23, passed in 2000, mandates spending increased for K-12 schools, which is by far the state's largest program.

Amendment 23 requires the state to "catch up" with the effect of inflation on schools, and created a specific funding source called the State Education Fund to pay for the increases in education funding.

The state must reallocate general funds from other state programs if necessary to meet the requirements of Amendment 23. Before the passage of Gallagher and TABOR, local governments picked up most of the tab for Colorado schools with property taxes. But the Gallagher Amendment (modified by TABOR in 1993) has reduced homeowners' property taxes in the past 20 years while the needs of Colorado schools continue to grow.

The state has attempted to address this dilemma by backfilling the lost local revenue with the state's general fund. In short, Gallagher and Amendment 23 force the state to spend more on schools, at the expense to other programs.

## TABOR Meets Amendment 23

Perhaps most fundamental among all the contradictions amended into Colorado’s Constitution is the clash between TABOR’s revenue limits and the voters’ decision, through Amendment 23, to mandate a specific increase in public education spending.

This convergence has limited the role of elected officials from making decisions about the budget, and in effect has turned it over to voter approved budgetary formulas.

## Term Limits For Elected Officials

Colorado was a leader in the term limits movement that restricts officeholders to limited time holding elected positions. It passed by citizen initiative in 1990. The idea was very popular, with voters passing the amendment with a 71 percent favorable vote.



Office	Number of Consecutive Terms that May Be Served	Number of Years in that Office
<b>State Legislature (Effective 1-1-91)</b>		
Colorado Senate	2 terms	8 years
Colorado House of Representatives	4 terms	8 years
<b>State Executive Branch (Effective 1-1-91)</b>		
Governor	2 terms	8 years
Lieutenant Governor		
Secretary of State		
State Treasurer		
Attorney General		
<b>State Education Boards (Effective 1-1-95)</b>		
State Board of Education	2 terms	12 years
University of Colorado Board of Regents		
<b>Local Governments (Effective 1-1-95)</b>		
County, City and County, City, Town, School District, Service Authority, and any Other Political Subdivision	2 terms if the terms are longer than 2 years; 3 terms if the terms are for 2 years or less	Generally, 6 or 8 years, depending on the length of the term

## Glossary Of Terms:

**Amendment 23:** An amendment to the Colorado constitution, approved by voters in 2000, requires the state to increase per-pupil and categorical funding to public education by at least the rate of inflation public for 10 years (this provision expired in 2010) and by the rate of inflation thereafter. Amendment 23 also created the State of Education Fund to help pay for its costs.

**Assessment Rate:** The portion of actual property value subject to taxation. For example, the Gallagher Amendment fixes the assessment rate for business property at 29 percent. This means that only 29 percent of the market value will be taxed.

**Capital Construction Fund:** Fund into which General Fund and Lottery Fund transfers for capital construction projects are deposited. The fund is used to build, buy, renovate and repair state buildings, major equipment and land.

**Cash Funds:** State funds collected and earmarked for a specific purpose. These are usually fee-for-service items such as the amount charged for a driver's license or college tuition. These funds are not part of the General Fund but are included in calculating the TABOR revenue limit.

**Crowding out:** Refers to the effect of funding mandates that squeeze resources from non-mandated programs, such as when federally mandated Medicaid spending combines with state mandated K-12 spending to "crowd out" other programs such as higher education.

**Equalization:** A legal requirement to even out per-pupil spending across all of the state's 178 school districts. The School Finance Act of 1994 required that state funding make up the difference or equalizes between what is provided to school districts through local taxes.

**Federal Funds:** Funds received directly from the federal government are exempt from TABOR's revenue ceiling.

**Fiscal Year:** The state's fiscal year runs from July 1 to June 30.

**Gallagher Amendment:** A constitutional amendment passed by voters in 1982, freezing the non-residential assessment rate (commercial) at 29 percent. In the total amount of property taxes collected by the state, residential properties are responsible for 45 percent of the tax burden.

**General Fund:** The General Fund is the state's primary operating account used to support the general functions of state government such as K-12, corrections, human services, etc. State income and sales tax make up 90 percent of the General Fund. The General Fund receives revenue that is NOT earmarked for a specific purpose.

**General Funds Exempt:** A fund exempt from TABOR restrictions generated from revenue allowed by Referendum C and from a portion of the Amendment 35 tobacco taxes. Appropriations from it are limited to certain programs.



**Highway Users Tax Funds (HUTF):** Off-the-top funds are removed from total available HUTF revenue prior to allocating the HUTF to cities, counties and the Department of Transportation.

**Maintenance of Effort (MOE):** MOE provision, as it relates to Amendment 23, requires General Fund appropriations for state aid under the School Finance Act to increase by at least 5 percent annually, except when state personal income grows by less than 4.5 percent.

**Mill:** The tax per dollar of assessed value of property. The rate is expressed in mills, where one mill is one-tenth of a cent (\$0.001, ten are equal to one-cent, one hundred equal to a dime, and one thousand equal to a dollar).

**Mill Levy:** The assessed property tax rate used by local governments and other jurisdictions to raise revenue in order to cover annual expenses.

**Referendum C:** Colorado voters adopted a measure popularly known as Referendum C in the general election in 2005. This measure allowed the State to retain all General Fund revenues in excess of the fiscal year spending limit imposed by TABOR between July 1, 2005 and July 1, 2010. For FY 2010-11 and subsequent fiscal years, Referendum C allows the state to retain all revenues that are in excess of the TABOR fiscal year spending limit, but less than the excess state revenues cap, for that fiscal year. The "excess state revenues cap" is equal to the highest annual total state revenues for FY 2005-06 through FY 2009-10, adjusted for each subsequent fiscal year for inflation, the percentage change in state population, enterprises, and debt service changes. These revenues must be deposited in the General Fund Exempt Account and shall be appropriated or transferred by the General Assembly for the following purposes only: (a) health care; (b) education, including capital construction projects related thereto; (c) retirement plans for firefighters and police officers, if the General Assembly determined such funding was needed; and (d) strategic transportation projects.

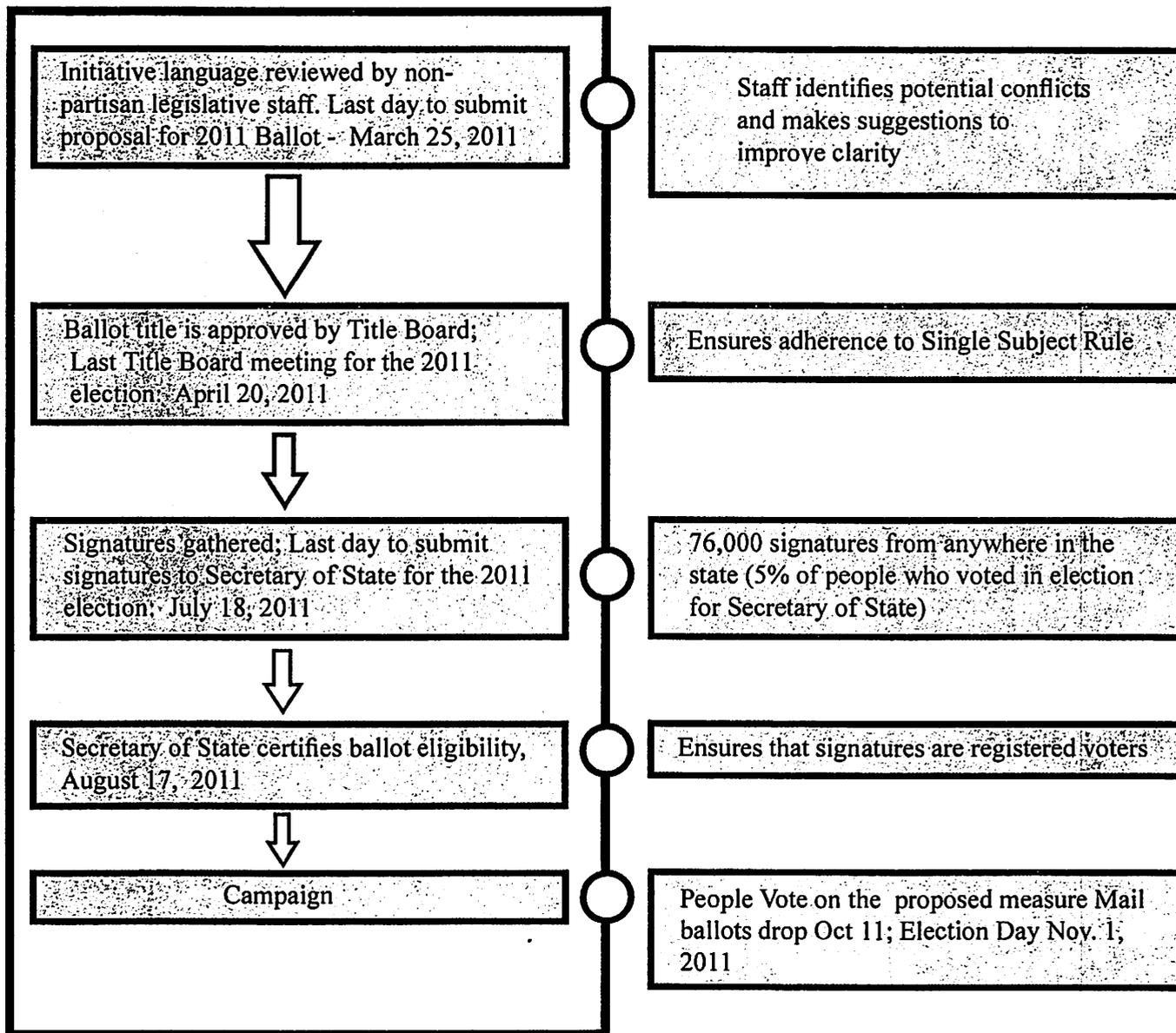
**State Education Fund:** Established by Amendment 23, which authorized a diversion of one third of one percent of taxable income on state income tax returns to the Fund. The revenues diverted into the fund are exempt from the TABOR revenue limit. State Education Funds can be used to meet the minimum funding requirements for K-12 education as long as the MOE provision is met, and for a variety of education-related purposes.

**Statutory 4 Percent Reserve:** According to C.R.S. §24-75-201.1 (1)(d)(III), a 4 percent reserve must be set aside to fund General Fund obligations in years where there is insufficient revenue. Money taken from the reserve account must be repaid each year.

**Taxpayers' Bill of Rights (TABOR):** The TABOR limit (Article X, Section 20 of the Colorado Constitution) restricts the State's total revenue growth to the sum of inflation and population.

Appendix

# Overview of Citizen Initiative Process





## Sources

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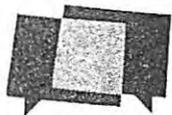
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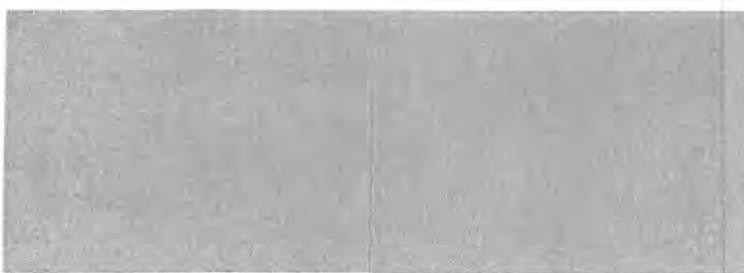
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Building a Better  
**Colorado**

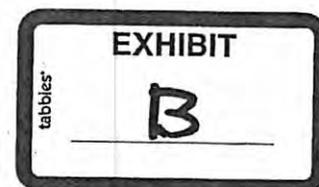


Project Overview:  
Building a Better Colorado  
Final Report

"Thank you for  
asking the right  
questions and for  
creating an avenue  
for discussion."

- Survey respondent at BetterCO.org

Prepared by:  
IVC Media and OnSight Public Affairs  
Feb. 8, 2016





Fellow Coloradans:

In the summer of 2015, a nonpartisan group of concerned Coloradans – ranging from current and former statewide office holders to mayors of many of our biggest cities, from former cabinet secretaries and state lawmakers to a former Colorado Supreme Court Justice – came together with a shared concern about the direction our state was heading in three critical areas: the ease with which the constitution can be amended; the decreasing participation and confidence in our election systems; and the imbalance between citizens’ expectations of services that their state government provides, and the ability of their state government to meet those expectations.

Their stated goal was to engage Coloradans in discussions of those issues in order to create a better Colorado.

Their commitment was to develop consensus policy recommendations which might emerge from that statewide conversation. The forum which they created to host this conversation was a new non-profit organization called “Building a Better Colorado”.

In just over four months, from August 2015 through January of this year, representatives of Building a Better Colorado met with more than 2,000 community leaders and concerned citizens in over 30 meetings held throughout the state. Building a Better Colorado also made significant efforts to leverage digital and social media to extend the conversation. The website BetterCO.org allowed anyone who was interested to study the issues, learn about the pros and cons of different policy options, and to offer their views and weigh in on potential solutions. Social media also played a large role in our outreach, as we worked to educate and engage Coloradans via robust efforts on Facebook and Twitter.

The intent of Building a Better Colorado was not to dictate solutions, but instead to engage people across the state in conversations about the challenges we face and and to come up with consensus solutions.

We conducted thorough quantitative and qualitative research – through polling and focus groups – to refine policy options and to help identify potential solutions that could be addressed by voters or the legislature.

In the end, we found consensus in three areas: let the state keep and spend money beyond current constitutional limits; make it more difficult to amend the state constitution and encourage statutory initiatives instead; and update the state’s primary election system to include more than 1 million unaffiliated voters.

This document summarizes the work that went into reaching those conclusions and is intended to serve as a guide for groups or individuals seeking to enact these policy changes in the months and years ahead.

Reeves Brown  
Project Director



## HONORARY CO-CHAIRS

**Hank Brown**  
Former U.S. Senator

**Rebecca Kourlis**  
Former Supreme Court Justice

**Roy Romer**  
Former Governor of Colorado

**Gigi Dennis**  
Former Secretary of State

**Phyllis Norris**  
Mayor of Grand Junction

**Ken Salazar**  
Former U.S. Sec of the Interior

**Tim Foster**  
President, Colorado Mesa University

**Gale Norton**  
Former U.S. Sec of the Interior

**Gail Schwartz**  
Former State Senator

**Michael Hancock**  
Mayor of Denver

**Tom Norton**  
Former State Senator

**John Suthers**  
Mayor of Colorado Springs

**John Hickenlooper**  
Governor of Colorado

**Federico Peña**  
Former Mayor of Denver

**Wellington Webb**  
Former Mayor of Denver

**Bill Ritter**  
Former Governor of Colorado

## OUR APPROACH

Building a Better Colorado was founded to address a fundamental question: What kind of government do voters want?

How we create laws and amend our constitution, how we elect our representatives, and how we manage the state budget are critical factors to Colorado's future.

We think a better Colorado can happen when we engage Coloradans in an honest, constructive conversation about what they want their state to be, motivated by a shared desire to build a better future for our state rather than political ideologies or organizational agendas.



### Meetings

Bi-partisan committees of subject matter experts developed options for consideration.

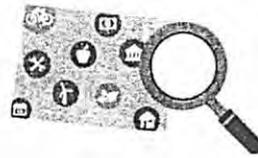
Summer 2015



### Discussion

Coloradans learned about issues, discussed, and offered opinions on solutions at Community Summits across the state and online.

Fall 2015



### Analysis

Findings from Community Summits and online engagement surveys informed objective research.

Winter 2015

### Action

The process will guide the development of workable measures that could be put before the voters in 2016.

November 2016

**"As a Coloradan, I honestly don't know as much about this issue as I should. Thank you for giving me something to read up on."**

- Comment from a participant in BetterCO.org online survey



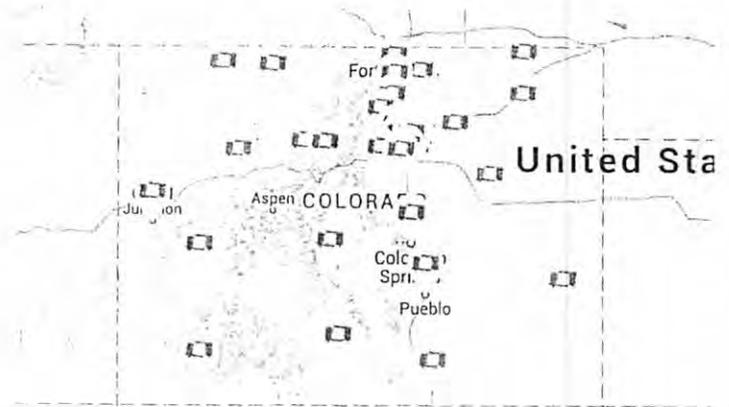
## MEETINGS ACROSS COLORADO

*"This effort is intended to allow Coloradans with vastly different views and very different agendas to come together and decide what is best for our state."*

Kelly Brough, BBCO Executive Committee member and President/CEO, Metro Denver Chamber of Commerce

After launching in the fall of 2015, Building a Better Colorado hosted events across the state attended by more than 2,000 civic leaders and interested Coloradans.

From September through January, Building a Better Colorado convened more than 30 meetings and Community Summits.



Those events were held in: Akron, Alamosa, Aurora (2), Boulder, Colorado Springs (2), Craig, Denver (3), Durango, Fort Collins, Glenwood Springs, Greenwood Village, Grand Junction (2), Greeley, Highlands Ranch, Lakewood, Lamar, Limon, Longmont, Loveland, Montrose, Salida, Silverthorne, Steamboat Springs, Sterling, Thornton, Trinidad, Vail, Westminster.

Attendees reviewed challenges facing the state's initiative process, election systems and financial future and shared their opinions on potential policy solutions to address the problems.



Project director Reeves Brown addresses attendees at our Colorado Springs community summit.



The meetings drew community leaders and citizens with an interest in public policy, meaning that results were not necessarily reflective of what a “likely voter” would support or oppose at the ballot box. Nonetheless, they helped us narrow our focus by gauging the relative popularity of ideas among Coloradans whose support would be critical to passage of any policy ideas that sprang from our efforts.



Snapshots from community summits in Lakewood, left, and Denver, right.

The meetings were notable for the constructive dialogue and thoughtful ideas provided by a diverse array of Coloradans who shared a heartfelt desire to build a better future for our state. Results of the policy ideas discussed and supported at those meetings, as well as demographic data on attendees, were posted to [BetterCO.org](http://BetterCO.org)

In addition to the community summits, in early September we met with members of Colorado Cooperation, a volunteer group focused on ensuring a healthy future for Colorado, and Club 20, which bills itself as “the voice of the Western Slope”; in November we hosted an event for nearly 300 young professionals in Denver that utilized “text” voting on policy ideas; and in January we held a citizens assembly in Denver. The citizens assembly featured two representatives from each of our 30 community summits who gathered for a briefing on our overall findings and to share their views on the process and options moving forward.



Attendees at the Building a Better Colorado meeting for Denver-area young professionals.



## Findings from our work:

**The legislature should remove the Hospital Provider fee from consideration under state revenue limits.** Asking the Legislature to move the Hospital Provider Fee out of the General Fund was the single-most popular idea we tested at our community summits. Well over 90% of the community leaders engaged in this process supported the idea of making the fee an enterprise fund so that money collected to draw federal matching funds to deliver health care did not count against the state's constitutional revenue limits.

**We should make it more difficult to amend the state constitution and encourage statutory initiatives instead.** Coloradans support the citizen initiative process, but they think that amendments to our state's foundational constitution should be supported by more than just a simple-majority of voters. And because the constitution provides the governing framework for our entire state, they think more Coloradans from across the state should be involved in developing any proposed changes to our constitution.

**We should let the state keep and use money above current limits.**

Coloradans support allowing the state to retain revenue beyond the current limits during times of economic growth, while still maintaining their right to vote on any proposed tax increases. They also made it clear that the legislature should be held accountable to invest these additional funds on priority needs such as education, transportation, mental health and long-term care for seniors.

**We should update the state's primary election system to include more than 1 million unaffiliated voters.**

Coloradans support making it easier for our 1 million unaffiliated voters – the largest and fastest growing group of voters in the state – to participate in primary elections. They also support reinstating a presidential primary.

**Coloradans also were eager to put forward their own solutions.** Attendees forwarded more than two dozen policy ideas that were not in materials prepared by our subject-matter experts. Many of those were variants on ways to address Colorado's financial future, ranging from removing all financial formulas from our state constitution to holding a constitutional convention. While there wasn't strong, statewide consensus on a single policy, we were made aware of the difficulty the state's Gallagher Amendment poses in counties with limited property tax base – both on the business community and on the ability for school districts to raise money. That is an idea that may warrant review down the road.



## We learned as we went along:

Building a Better Colorado started with a study of the challenges Colorado faces in five areas: election systems, the initiative process, Colorado's financial future, term limits, and campaign finances.

In researching potential solutions, our bipartisan team of subject-matter experts determined that one issue – campaign-finance reform – really required action at the federal level, as opposed to an issue effectively addressed by Colorado voters. Challenges posed by the state's term limits process were folded into our discussions on election systems, but the idea was later eliminated from our discussion materials altogether due to a lack of consensus on the challenges and potential solutions.

Early meetings were scheduled for three hours, and attendees were asked to weigh in on 35 different policy options across our three topic areas. As a result of the feedback and results from the first dozen meetings, we reduced by half the number of policy options participants reviewed in the final 15 meetings and encouraged deeper discussion of ideas and alternatives that continually rose to the surface. As we moved closer to concluding our outreach and witnessed growing consensus around the idea of allowing the state to keep and use revenues beyond the current limit, we asked Coloradans to rank areas where additional revenue from potential fiscal policy initiatives should be directed, and education, transportation, mental health and long-term care for seniors topped the list.



Building a Better Colorado held more than 30 meetings across the state.



# DIGITAL OUTREACH

1. Building a Better Colorado's Facebook page reported the following metrics:

**Page Likes: 12,229**

*The number of Facebook users who are fans of Building a Better Colorado.*

**Engagement: 52,538**

*The number of unique Facebook users who interacted with the BBCO Page by liking, commenting, or sharing a post.*

**Impressions: 2,723,790**

*The number of times content associated with our FB ads was seen by target audiences on Facebook. Impressions = total number of views.*

**Reach: 282,319**

*The number of targeted Colorado residents who saw content associated with BBCO on Facebook. (Reach = number of unique viewers).*

**Email sign-ups: 10,000+**

*The number of individuals who signed up to receive updates and additional information via our community meetings, online engagement tool and social media.*

2. In October, we launched BetterCO.org, which featured details on the project and an engagement tool that allowed visitors to review policy options and weigh in with their comments and opinions on proposed policy options.

**Page Views: 87,328**

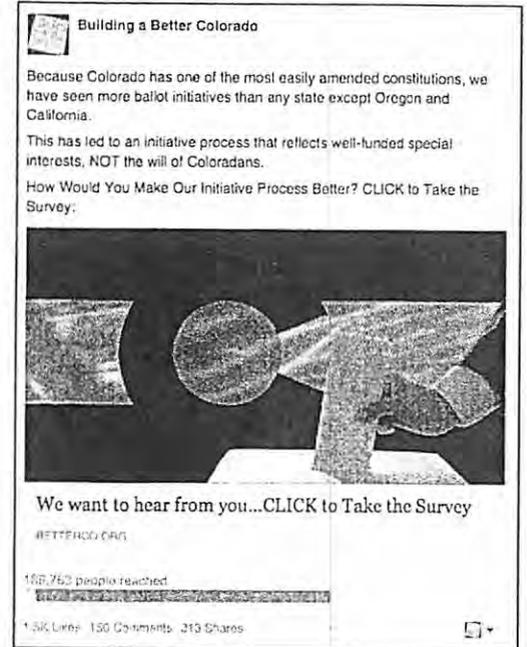
*The number of times a user visited a particular page on our website.*

**Website Users: 17,815**

*The number of unique visitors that visited the website.*

**Survey Completions: 5,988**

*The number of people who completed a survey for any topic.*





## QUOTES OF NOTE:

A sampling of quotes submitted to us via our website:

### FINANCIAL FUTURE

**"I would like to see limits on ballot initiatives that affect the state budget. Too much fiscal responsibility has been ceded or taken away from our representatives."**

**"Let's stop being stupid about our future. ... Let our elected officials do what they're elected to do. Support schools and higher education and health care and roads/bridges."**

**"TABOR is an important check on legislative power but we need more flexibility to address urgent needs."**

### INITIATIVES

**"The best suggestion is that signatures should be gathered from across the state rather than just in one area."**

**"Those of us who live on the Western Slope feel like nobody cares what we think and that we don't exist. It would be nice if we could be included in the process of whatever goes on in this state."**

**"Make it harder to amend constitution and keep it the same for citizen-passed laws that can be changed by a vote of legislature -- they are accountable at elections."**

**"Allow everyone to vote in a primary with one party or the other. That's fair."**

**"We need a more inclusive process that gives more people the chance to express their preferences. With party membership in decline, the parties should not have a stranglehold on our options for candidates."**

**"As long as we are legal taxpaying voters, we should have the choice of voting for the person, regardless of the party."**



## EARNED MEDIA

Support for the effort and topics we asked participants to explore was voiced by editorial boards from The Denver Post, The Colorado Springs Gazette, The Durango Herald and the Loveland Reporter-Herald.

Our summits also drew considerable interest from local media.

### A sampling of the coverage:

**"A civic organization that dubs itself "Building a Better Colorado" has made promising first steps toward grappling with fiscal and electoral problems often related to provisions in the state constitution. It's strongly bipartisan, for example. ... Moreover, it is focused on important issues like the financial health of the state, our electoral system."**

[Denver Post editorial, Aug. 24, 2015](#)

**"Business leaders who say they've footed a large portion of the cost of keeping bad amendments from being added to Colorado's constitution now are asking company owners and executives to get involved. They want to have a bigger conversation about what changes can be made to make the state's government a more effective engine to help grow the private sector and the economy."**

[Denver Business Journal, Sept. 17, 2015](#)

**"... As things stand, Colorado doesn't fully benefit from the natural growth in revenue that occurs in good times. Meanwhile, in bad times, lawmakers are barred from ensuring that all sectors of the budget share in the cutbacks. The next recession will absolutely devastate unprotected programs. Any civic group that intends to tackle this problem will need to gather a bipartisan coalition willing to ask both sides of the political spectrum to compromise when preparing ballot measures to take before voters. That appears to be what Building a Better Colorado is trying to do. At least we hope so."**

[Denver Post editorial, Sept. 21, 2015](#)

**" Led by political heavy-hitters from both parties, Building a Better Colorado is hosting 40 meetings around the state, gauging public opinion on a variety of solutions and soliciting inventive ideas on the three topics."**

[Colorado Springs Business Journal, Oct. 20, 2015](#)

**"A new organization called Building a Better Colorado is meeting with civic leaders throughout the state in a quest to fix 'a growing disconnect between citizens and their government.' Organizers cite constitutional chaos, declining voter participation and decreasing ability of state government 'to meet the expectation of its citizens' as areas of concern. ... In a meeting with The Gazette's editorial board, it seemed clear the organizers had no hard or hidden agendas."**

[Colorado Springs Gazette editorial, Oct. 21, 2015](#)

**"An effort to address touchy political issues in Colorado law is getting support from San Luis Valley officials. Dubbed Building a Better Colorado, the organization is in the early stages of developing a slate of ballot initiatives designed to fix what organizers call problematic elements of the state's financial structure, election system and the ballot initiative process."**

[Valley Courier, Oct. 8, 2015](#)



**"A group of Weld County officials, business owners and community leaders gathered Wednesday in Greeley to chime in on possible solutions to issues with Colorado's election systems, ballot initiative process and financial future. Building a Better Colorado, a nonpartisan coalition of state leaders, gathered at the 11th of 30 community summits around the state in an attempt to find consensus on the best, and most acceptable, solutions to those three key issues."**

Greeley Tribune, Oct. 29, 2015

**"The group ... is a bipartisan collective of prominent Colorado leaders who, among other goals, are seeking to untangle Colorado's conflicting constitutional amendments that dictate how the state can spend its money. ... Its meetings are aimed at sparking a community dialogue on issues from state constitutional amendments to political primaries and could lead to a ballot question or questions in 2016 to change constitutional provisions."**

Denver Business Journal, Nov. 25, 2015

**"A coalition aimed at examining reforms to budget and elections processes in Colorado identified restructuring a hospital fee and strengthening rules governing citizens initiatives as solutions to ease conflicts and challenges facing the state. The Building a Better Colorado coalition – comprised largely of civic and business leaders – sought to address the ease with which Colorado's constitution is amended, decreased participation in elections systems and an "imbalance" between citizens' expectations of government services and the ability to meet desires."**

Durango Herald, Nov. 28, 2015

**"A group of about two dozen local leaders and interested residents gathered Monday night to weigh in on ideas aimed at creating a brighter future for Colorado. A bi-partisan, grassroots group called Building a Better Colorado hosted a community summit in Sterling, one of dozens that have been or will be held across the state."**

Sterling Journal-Advocate, Dec. 8, 2015

**"Right now it's halftime for the Building a Better Colorado effort, which has held a series of town meetings across the state. Commendably, the organization has worked very hard to reach beyond the metro area."**

Henry Dubroff and John Huggins, Dec. 12, 2015

**"These have been really thoughtful conversations, whether we have been in Glenwood Springs or Trinidad or Fort Collins or Greeley. We've got people from all political parties and all walks of life sitting down and having civil conversations about how we can have a better Colorado, and that's something that's really a pleasure to see, given the tone of so much of our political discussion these days."**

Loveland Reporter-Herald, Jan. 8, 2016

**"People with an IQ greater than their shoe size can tell right away if you're asking for their opinion or telling them yours. We genuinely want the people we're engaging in this conversation to be in control of the outcome."**

Special District News, Jan. 2016

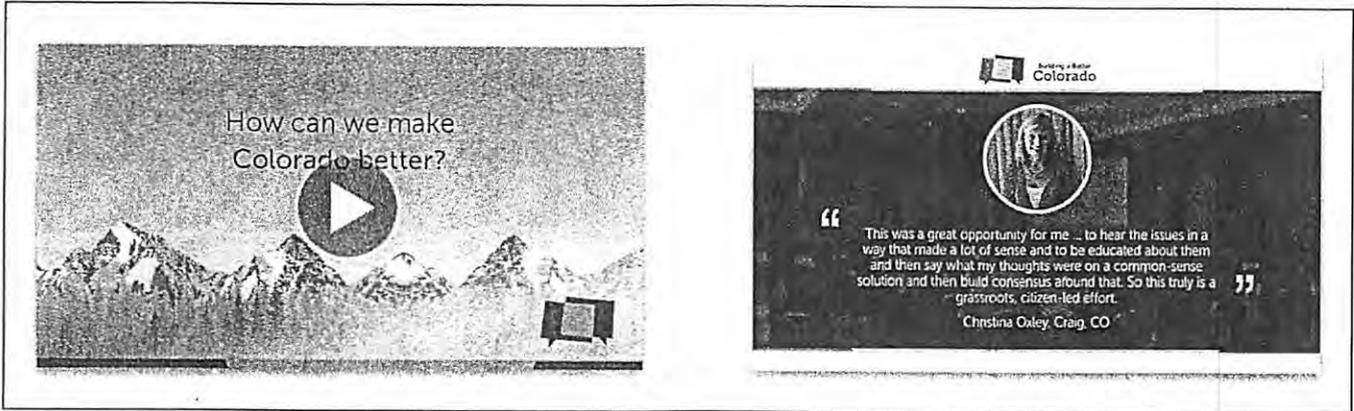
**"...Here's what wasn't on the table. Any change to requirements that voters approve new or higher taxes or that permission is needed to incur new public debt. We did talk about the requirement that local and state governments return to taxpayers any revenues over limits set under a formula included in TABOR."**

Grand junction Daily Sentinel, Jan. 26, 2016



## VIDEOS

We produced a short, animated educational video to explain Building a Better Colorado's purpose and objectives.



The video reached nearly 30,000 Colorado voters, was viewed 16,755 times, and received 257 positive interactions.

A second video highlighting the voices of Coloradans who participated in summits was viewed more than 1,000 times.

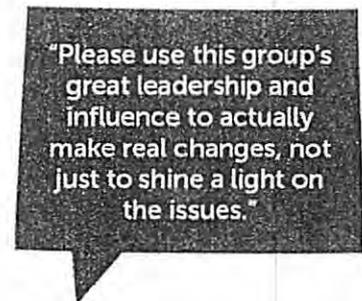
## NEXT STEPS

As a 501(c)3 organization, Building a Better Colorado's role has been to engage Coloradans in a constructive discussion about these policy challenges in an effort to identify consensus policy recommendations to make our state better. We will defer to other more appropriate political entities to pursue implementation of the recommendations that emerged from this statewide conversation.

Several independent efforts have emerged to pursue implementation of consensus policy ideas via ballot initiatives in 2016. We will watch those efforts closely and report back on results after the November elections.

In the meantime, Building a Better Colorado intends to continue playing close attention to the issues that are important to Coloradans, with the idea of continuing this effort in the months and years to come.

Should you have questions or comments, please let us know at [info@betterco.org](mailto:info@betterco.org).



- Survey respondent at BetterCO.org



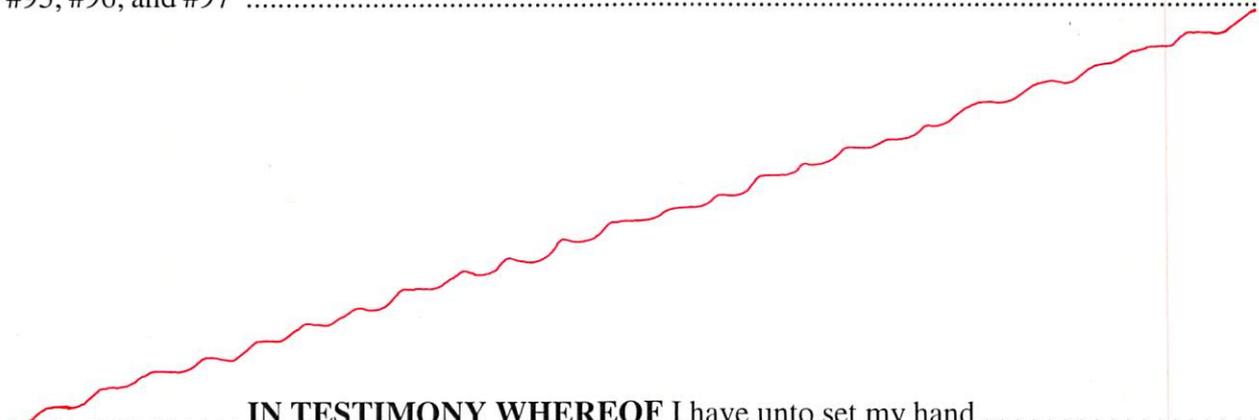
# STATE OF COLORADO

DEPARTMENT OF  
STATE

## CERTIFICATE

I, **WAYNE W. WILLIAMS**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of Exhibit C Exhibit D, and Exhibit E filed on behalf of objector Timothy Markham at the March 16, 2016 rehearing for Proposed Initiatives "2015-2016 #95, #96, and #97".....

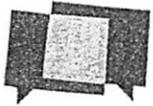


..... **IN TESTIMONY WHEREOF** I have unto set my hand .....  
and affixed the Great Seal of the State of Colorado, at the  
City of Denver this 12<sup>th</sup> day of April, 2016.



*Wayne W. Williams*

SECRETARY OF STATE



Building a Better Colorado

[About](#) [Process](#) [Participate](#) [Updates](#) [Summits](#) [Contact](#)



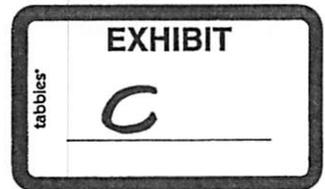
# About Building a Better Colorado

[Intro](#) [FAQs](#) [Honorary Co-Chairs](#) [Issue Overview Brief](#) [Contact](#)

What Would You Do To Make a #betterCO?

Enter Email

Get Started



Building a Better Colorado wants to address our common challenges in a way that brings people together.

A diverse, nonpartisan coalition of Coloradans has come together with the shared belief that Colorado can do better than the divisive arguments that have come to dominate our political discourse.

By engaging citizens of all political ideologies in honest conversations, we'll better understand the scope of opinion and perspective, and use that input to form workable solutions to key challenges facing Colorado:

- More than 1 million voters can't participate in primary elections, turnout is dropping, and people are increasingly selecting "unaffiliated" when registering to vote;
- Our state constitution is cluttered and conflicted because rules make it easy to amend the constitution, but difficult to change those amendments down the road; and
- The state's fiscal policy — as mandated by voters per the constitution — is unsustainable given competing revenue and spending mandates.

To keep the conversation focused on the very real challenges facing Colorado, and to increase opportunities for success, we will not carry forward any ideas that seek to undo the right of voters to approve all tax increases.

Building a Better Colorado is not advocating for specific policy recommendations - instead, we want to facilitate constructive dialogue among Coloradans who want to see better and more responsible governance.

And once everyone's had a chance to participate in the conversation, we're committed to supporting consensus-driven policy recommendations.

Be a part of making a better Colorado!

Enter Email

Get Started

## What Kind of Government do Voters Want?

Building a Better Colorado wants to address this fundamental question: What kind of government do voters want?

How we create laws and amend our constitution, how we elect our representatives, and how we manage the state budget are critical factors to Colorado's future.

## How Voters Enact Laws and Amendments

Our state constitution is cluttered and conflicted because rules make it easy to amend the constitution, but difficult to change those amendments down the road.

## How Our State Elections Work

More than 1 million voters can't participate in primary elections, turnout is dropping, and people are increasingly selecting "unaffiliated" when registering to vote.

## How Our State Budget Works

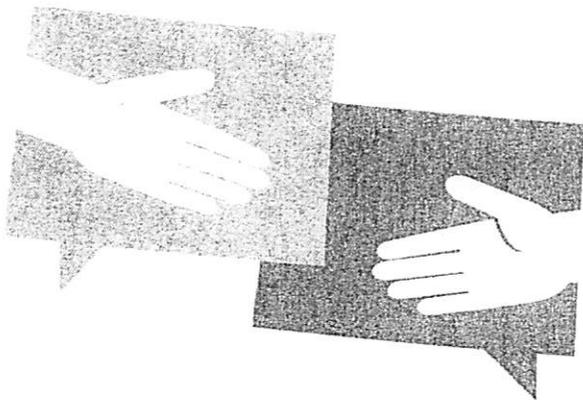
The state's fiscal policy — as mandated by voters per the constitution — is unsustainable given competing revenue and spending mandates.

Be a part of making a better Colorado!

Enter Email

Get Started

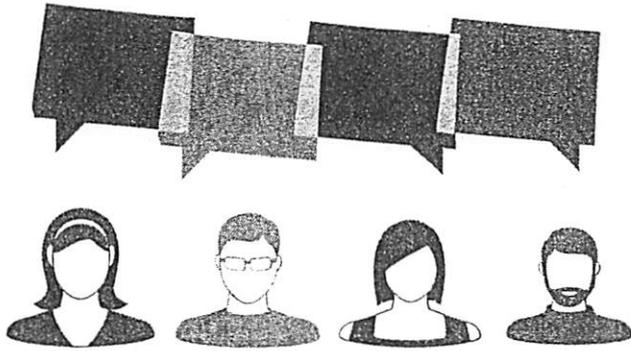
## How Building a Better Colorado will work:



### Development

Bipartisan committees of subject-matter experts develop options for consideration

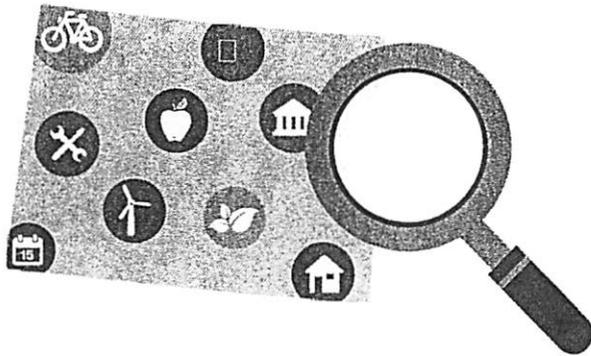
Summer 2015



## Discussion

Coloradans learn about issues, discuss, and offer opinions on solutions at Community Summits across the state and online

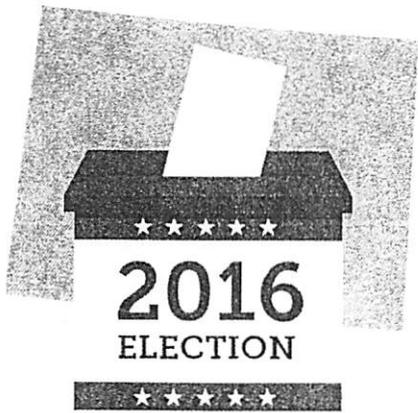
Fall 2015



## Analysis

Findings from Community Summits and online engagement surveys inform objective research

Dec. 2015



## Action

The process guides the development of workable measures that could be put before voters

Early 2016

How we spend our money, how we elect our representative leadership, and how we create our laws and amend our constitutional rights are all important elements of making Colorado a unified state.

In short, Building a Better Colorado doesn't have the answers. But we know we can and must do better and we need your help to find the right path.

This issue isn't about picking a Democratic or Republican winner. It's about having a government that works best for all of us.

Building a Better Colorado is about Coloradans coming together to decide what kind of government we really want. It's about working together to make the state that we all love a better place.

## Issue Overview Brief

Building a Better Colorado has prepared an issue overview document for use at community summits to assist the conversations.

This issue brief can be a useful primer for understanding the challenging issues we're discussing.

The document is an evolving "draft" as we learn more from the ongoing discussions both at the summits and online.

Download and read the Issue Brief:



Download the PDF

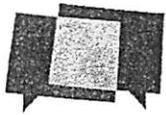
## What Would You Do to Build a Better Colorado?

Enter your email address

Join the Conversation

What do you think? It's your turn to join the conversation about possible solutions to make Colorado better.





# Initiative Process

## Colorado Initiative Process

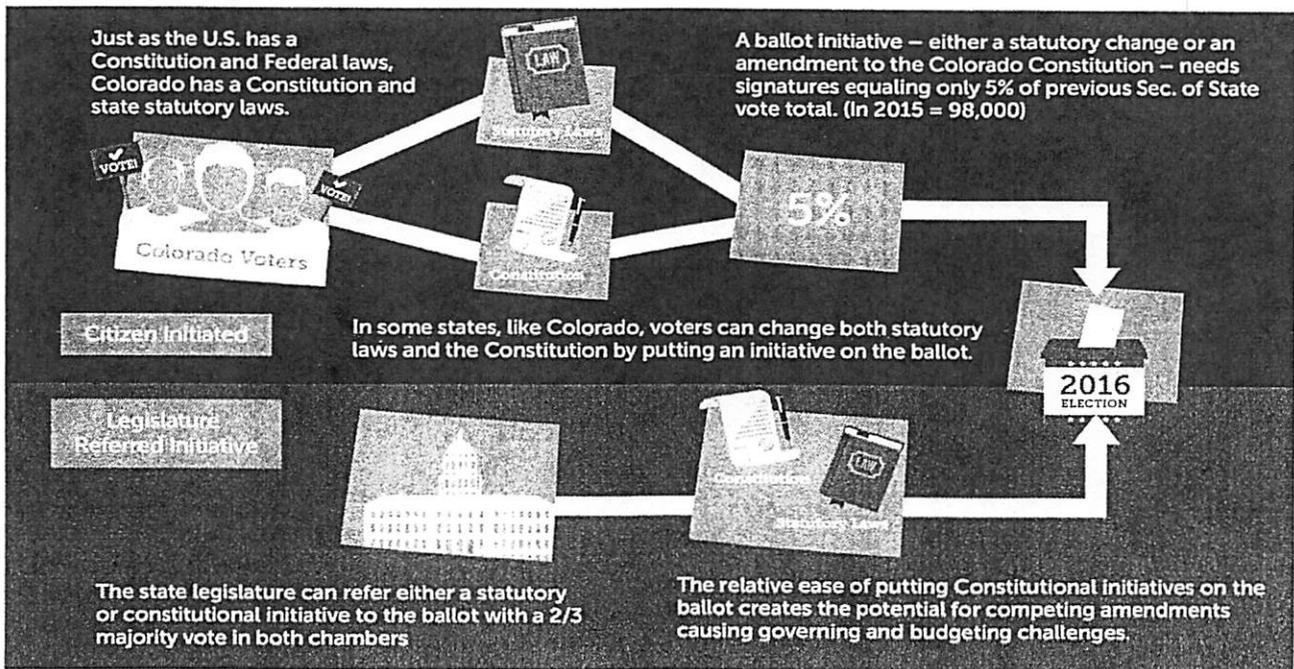
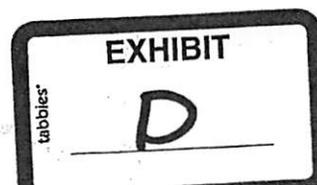


Fig. 1

Colorado is one of 16 states where citizens can bypass the legislature and place proposed changes to state law and proposed constitutional amendments on the ballot. Colorado's signature threshold for citizen initiatives to qualify for the ballot is among the lowest in the country (see Figure 1), and is the same for proposed statutes and proposed amendments.

Citizens and special-interest groups (many from out-of-state) regularly utilize the process and, according to the Initiative & Referendum Institute, Colorado has seen more citizen initiatives than all but California and Oregon.

Increasingly, initiatives are being used to amend our state constitution. Since 2005, Colorado voters have been presented with more than two dozen Initiated Amendments and just 2 Initiated Statutes. Conflicting policies that have been placed into our constitution as amendments make it exceedingly difficult for state officials to follow voters' directions.





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## Challenges

For 2 distinct mechanisms, same low bar exists for ballot qualification and passage.

The state constitution is intended to provide a framework for government and protect fundamental rights, while statutes (laws) are intended to address how government functions and how citizens interact within that framework. Over time, however, amendments have been made to our constitution that would have been more appropriately placed in statute, creating longer-term consequences that are now difficult to correct. Our state constitution – at nearly 75,000 words and with more than 150 amendments – is now among the longest in the nation; and considerably longer than the roughly 8,000-word U.S. Constitution, which has 27 amendments.

- Colorado is one of only 3 states that has the same requirements (signature-gathering to qualify for a ballot and a simple-majority vote for passage) for both citizen-initiated constitutional amendments and citizen-initiated statutory changes. As a result, campaigns increasingly propose amendments to the constitution because they are more difficult to change in the future.
- Signatures for citizen initiatives can be gathered from anywhere, meaning campaigns concentrate in urban areas and little, if any, consideration may be given to how a measure might impact our diverse state.

## Conflicting and unsustainable policies.

Well-intended but narrowly focused amendments to our constitution have inadvertently created conflicting and unsustainable policies.

For example, both Amendment 20 (medical marijuana) and Amendment 64 (recreational marijuana) allow some form of unlicensed growing. As such, it is difficult to know who is "legitimately" growing marijuana in the unlicensed system, and who is growing it to sell to minors or ship out of state -- thereby undermining the promise that legalizing marijuana would shut down the black market.

And, according to the 2011 "Financing Colorado's Future" study by the University of Denver and the Colorado Futures Center at CSU (updated in 2013), fiscal policy amendments embedded into our constitution have created a structural imbalance in our state budget that will result in only enough money to fund K-12 education, Medicaid and correctional facilities by 2024. Put another way, unless something is done, the state won't have the money to pay for highways, its state patrol, courts, higher education, human services and many other functions the public expects of government.



## *We want your opinion on 2 questions:*

1. Should we encourage ballot proponents to seek amendments to state LAW rather than the CONSTITUTION?
2. Should we require a higher threshold for passage of amendments to the CONSTITUTION than for citizen-initiated amendments to state LAW?

Policy options that encourage ballot proponents to seek amendments to state LAW rather than the CONSTITUTION.

1a. Maintain current policy regarding the requirements for ballot proponents to collect signatures and qualify for the ballot.

Challenges addressed: none

### Pros

- Regular use of Citizens Initiatives is evidence of its need and popularity.
- Unfavorable public policies can be removed or amended by statewide vote.
- Surveys show Coloradans strongly support Citizen Initiative process.
- Making it more difficult to pursue Citizen Initiatives won't stop well-funded special interests from using ballot to achieve their policies.

### Cons

- The initiative process is over-used and has cluttered our constitution with short-sighted public policies which result in unintended consequences.
- The constitution is bogged down with the vast number of constitutional amendments including everything from spending mandates and revenue limitations to wildlife management policies. Some of these amendments are not appropriate for a foundational governing document like the constitution and should be placed in state statutes.
- Colorado's current signature requirement is low relative to other states and this makes Colorado a target for out-of-state special interests to test their policy agendas.



1b. Require more petition signatures for citizen-initiated amendments to the CONSTITUTION than for initiated amendments to state LAW.

**Challenges addressed: For 2 distinct mechanisms, same low bar exists for ballot qualification and passage; Conflicting and unsustainable policies**

Background

Currently, the same number of petition signatures is required for both constitutional and statutory amendments. Given that constitutional amendments are often permanent changes to the constitution, some argue that more petition signatures should be required than for initiating state statute.

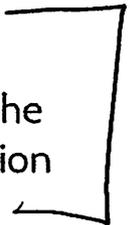
Pros

- Provides for additional protection of the constitution which is the durable framework of our government.
- Might encourage initiative proponents to pursue changes to statute rather than changes to our constitution.

Cons

- Initiatives allow citizens to participate in government, and erecting additional barriers is wrong.
- Increases cost of petition signature-gathering and unlikely to deter number of measures. (If supporters have money for a statutory amendment, they most likely have it for a constitutional amendment.)

1c. Require signatures for citizen-initiated amendments to the CONSTITUTION to be gathered from different geographic areas across the state (such as congressional or legislative districts) to increase consideration of statewide impact.



**Challenges addressed: For 2 distinct mechanisms, same low bar exists for ballot qualification and passage; Conflicting and unsustainable policies.**

Background

Currently, there is no geographic distribution requirement for the collection of signatures. Supporters of initiatives may collect all the required number of signatures from the more populated areas of the state without involving other areas of the state which may be equally-affected by the proposed measures. There are states, such Nevada and Florida, that require a percentage of signatures to be collected from each congressional District.



Pros

- Requires some measure of support from all areas of state in order to qualify for the ballot.
- Applying this geographic requirement ONLY to constitutional changes may encourage initiative proponents to pursue statutory changes instead.

Cons

- Doesn't impact which measures end up on ballot, based on other states' experiences.
- Can hinder "grassroots" campaigns due to increased costs and logistics for signature-gathering.



Policy options that require a higher threshold for passage of amendments to the CONSTITUTION than for citizen-initiated amendments to state LAW.

**Challenges addressed: For 2 distinct mechanisms, same low bar exists for ballot qualification and passage; Conflicting and unsustainable policies**

Background

Since it takes the same number of signatures and the same simple-majority to pass both a constitutional amendment and a statutory amendment, there is an incentive for initiative proponents to pursue amendments to the constitution rather than statute because it is more difficult to change in the future; making changes to the constitution requires another vote of the people, whereas the legislature can make such changes to state statutes.

2a. Maintain current policy which requires the same threshold for passage of amendments to the CONSTITUTION and for citizen-initiated amendments to state LAW.

Pros

- Regular use of Citizens Initiatives is evidence of its need and popularity.
- Unfavorable public policies can be removed or amended by statewide vote.
- Surveys show Coloradans strongly support Citizen Initiative process.
- Making it more difficult to adopt Citizen Initiatives won't stop well-funded special interests from using ballot to achieve their policies.



Cons

- The initiative process is over-used and has cluttered our constitution with short-sighted public policies which result in unintended consequences.
- The constitution is bogged down with the vast number of constitutional amendments including everything from spending mandates and revenue limitations to wildlife management policies. Some of these amendments are not appropriate for a foundational governing document like the constitution and should be placed in state statutes.
- The current simple-majority vote requirement to pass measures makes Colorado a target for out-of-state special interests to test their policy agendas. 2b. Make it harder to amend the constitution by requiring future amendments to be approved by a supermajority vote, but allow fixes/changes to existing language to be approved by the same simple-majority threshold by which it was adopted initially.

2b. Make it harder to amend the constitution by requiring future amendments to be approved by a supermajority ( $\frac{2}{3}$ ) vote, but allow fixes/changes to existing language to be approved by the same simple-majority threshold by which it was adopted initially.

Pros

- Provides for additional protection of the constitution which is the durable framework of our government. Changing the constitution should be more difficult than changing state law.
- Might encourage initiative proponents to pursue changes to statute rather than changes to our constitution.
- Fair to allow changes by a simple majority vote to existing constitutional amendments that were passed by a simple majority vote.

Cons

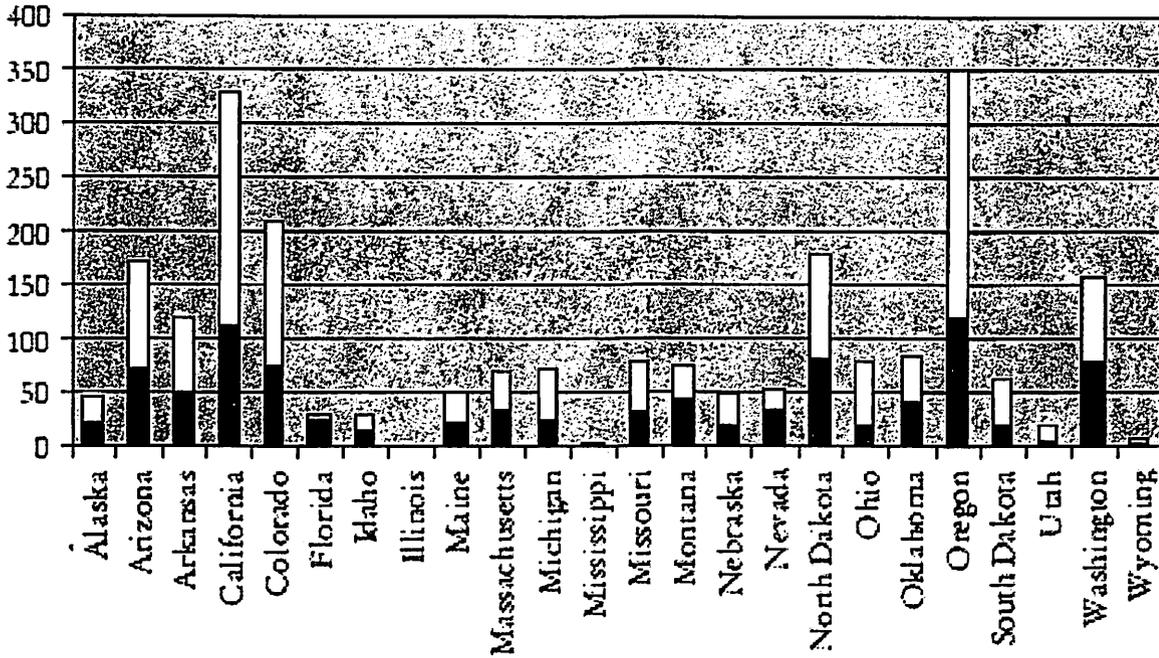
- Constitution has always been amended with simple-majority and does not need to change.
- With such a high bar, it could be difficult to ever adopt constitutional amendments.



Fig. 2 Comparing Colorado's Signature-gathering Requirement to Other States  
(Source: [http://www.ncsl.org/Portals/1/Documents/legismgt/elect/2012\\_SigReqs.pdf](http://www.ncsl.org/Portals/1/Documents/legismgt/elect/2012_SigReqs.pdf))

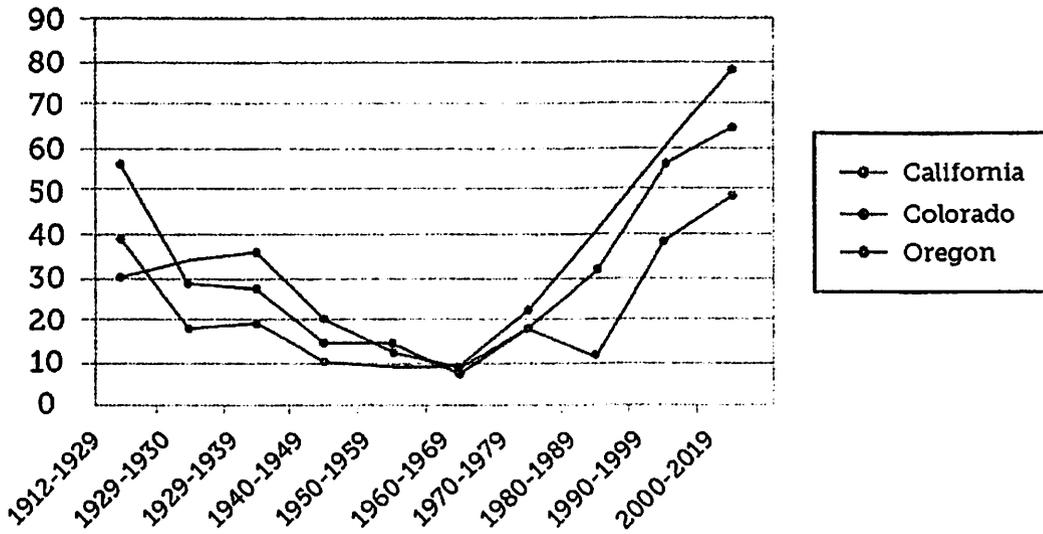
Constitutional Initiatives			Statutory Initiatives	
State	Signature Formula	Geographic Distribution	Signature Formula	Geographic Distribution
AZ	15% of votes cast for governor in last election	None	10% of votes cast for governor in last election	None
AR				
CA	8% of votes cast for governor in last general election	None	8% of votes cast for governor in last general election	None
CO	5% of votes cast for Sec. of State in last election	None	5% of votes cast for Sec. of State in last election	None
FL	8% of total votes cast statewide in last presidential election	8% in at least 13 of the state's 25 congressional districts	N/A	
MI	10% of votes cast for governor in last election	None	8% of votes cast for governor in last election	none
NV	10% of total votes cast in last general election	10% of total votes cast in each congressional district	10% of total votes cast in last general election	10% of total votes cast in each congressional district
OK	15% of votes cast for office receiving highest number of votes in last state election	None	8% of votes cast for office receiving highest number of votes in last state election	
OR	8% of votes cast for governor in last election	None	6% of votes cast for governor in last election	None
WA	10% of votes cast for governor in last election	None	N/A	

Fig. 3 State Comparison of Number of Initiatives to Date (Source: Initiative & Referendum Institute)



\*White = Total put before voters | \*Blue= Passed

### State Initiative Trends



Monday, February 3rd, 2016

## PRESS RELEASE

### Brophy, Gibbs file '16 initiative that would raise bar on amending Constitution

A bipartisan duo filed Constitutional initiatives for the November 2016 election late Tuesday that would make it more difficult to add new amendments to the Colorado Constitution and require broader citizen consideration of such measures. Their plan would require signatures for newly-proposed Constitutional amendments to be collected in all 35 state senate districts before they qualify for the ballot. Once qualified, new constitutional provisions would need to receive 55% of the vote in order to be approved.

Democrat Dan Gibbs, a former prominent State Senator and current Summit County Commissioner, and Republican Greg Brophy, himself a former top ranking State Senator representing Colorado's Eastern Plains, filed the initiatives. If it clears the title setting process and receives sufficient signatures, their plan would appear on the ballot this November.

"Amending the state constitution should take more than a couple big dollar donors, a signature collection crew on Denver's 16<sup>th</sup> Street and Boulder's Pearl Street Malls, and a big idea that sounds good on a bumper sticker," Brophy said. "There's a reason our nation's Founding Fathers required a 2/3 vote of Congress and the approval of ¾ of the states to change the US Constitution – it's because the constitution should be reserved for bedrock principles that have been thoroughly vetted and are broadly supported.

"Our constitution has become a special interest playground because the bar to amend it is so spectacularly, inexplicably, unthinkingly low," said Brophy.

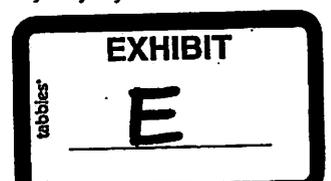
"We wholeheartedly support the right of citizens to affect change through the initiative process," Gibbs said. "Our proposal reflects the simple wisdom, embodied in our US Constitution and by just about every other state, that the bar to raise the constitution should be high. What we are proposing only affects future amendments to the Colorado Constitution and not citizen initiated statutory proposals or the Colorado General Assembly's referred statute changes"

"The requirement that signatures be collected all across Colorado is especially important," Gibbs said. "I love Denver and Colorado Springs, but the rest of the state should have a voice when it comes to placing constitutional questions on the ballot, and as a practical matter, today, the rest of the state doesn't. We plan to seek signatures from all 35 State Senate Districts ourselves to meet this new higher threshold for qualifying for the ballot."

Specifically, the initiatives would require proponents of proposed Constitutional Amendments adding new concepts or provisions to the foundational document to collect signatures from at least 2% of registered voters in each Senate District. Current law now has no geographic requirement in obtaining signatures for a ballot initiative, and the signature collection process generally takes place almost entirely within the Denver-Boulder-I-25 corridor with no input from citizens in the rest of the State.

Once on the ballot, the plan would require approval by 55% of the general electorate in a statewide vote. Currently, only a bare majority is required to pass a constitutional amendment, which is also the same threshold required for citizens to adopt amendments to state laws.

The new requirements would only apply to amendments adding new provisions to the constitution. Existing provisions in the constitution could be repealed by the same simple-majority by



which they were originally adopted. Similarly, citizens could still adopt amendments to state law by a simple-majority.

The proposal comes after months of statewide meetings and outreach efforts by Building a Better Colorado, a statewide bipartisan coalition exploring ways to improve the state's initiative process, election systems, and fiscal policy. This proposal, in particular, was consistently popular among the nearly 6000 interested Coloradans who've participated in the statewide conversation over the last several months.

"We've heard from thousands of Coloradans across the state that, while voters should have an outlet to change both the law and the Constitution, it should be more difficult to amend the Constitution and a more diverse array of Coloradans should be involved in that process," said Dan Ritchie, former University of Denver Chancellor and convener of the Building a Better Colorado process. "This proposal provides a straightforward path for Coloradans to pursue amendments to both, but it provides a higher threshold to amend our state's Constitution."

Ritchie said he was delighted that Brophy—the Eastern Plains watermelon farmer known broadly as a Prius driving, bicycle riding, policy wonk —teamed with Gibbs—a former outdoor adventure guide, Congressional staffer, and retail political juggernaut who has long represented Colorado's most well-known resort communities – to pursue the big policy change.

"Greg Brophy and Dan Gibbs are both respected leaders in their parties from different corners of Colorado," said Ritchie. "From the farmlands of Eastern Colorado to the resort communities in the Colorado Rockies and all points around and in between, we think voters will agree—amending the Colorado constitution should be more difficult."

Colorado is currently one of sixteen states where citizens can bypass the legislature and place proposed constitutional amendments directly on the ballot, and Colorado has one of the most easily-amended state constitutions in the nation. Only California and Oregon have seen more initiatives proposed.

###

**Contact:**

Telbe Storbeck  
(970) 623-1052

TITLE SETTING BOARD

March 2, 2016

DATE FILED: April 14, 2016 5:30 PM

Proposed Initiative 2015-2016 #93 "Threshold  
for Voter Approval of Initiated Constitutional  
Amendments"

THE BOARD

Suzanne Staiert, Chair, Deputy Secretary of State  
Jason Gelender, Office of Legislative Legal Services  
Glenn Roper, Deputy Attorney General

1 PROCEEDINGS

2 MS. STAIERT: We're on? All right.

3 Good morning. This is a meeting of the  
4 Title Setting Board pursuant to Article 40 of  
5 Title 1 C.R.S. The time is 9:30 a.m. The date is  
6 Wednesday, March 2, 2016. We're meeting in the  
7 Secretary of State's Aspen Room, 1700 Broadway,  
8 Denver, Colorado.

9 The Title Setting Board today consists of  
10 myself, Suzanne Staiert, Deputy Secretary of State  
11 on behalf of Wayne Williams; Glenn Roper, designee  
12 of Attorney General Cynthia Coffman; and Jason  
13 Gelender, designee of the Director of Office of  
14 Legislative Legal Services, Dan Cartin.

15 Today we are meeting to consider title  
16 setting for nine measures. There are two titles for  
17 each measure. One is a statement, and the other is  
18 the statement in the form of a question. Changes  
19 adopted by the Title Board to the first title in the  
20 staff draft will be considered adopted for the other  
21 title.

22 For anyone who wishes to testify, there's  
23 a sign-up sheet on the back table. This hearing is  
24 broadcast over the Internet from the Secretary of  
25 State's website, and public restrooms are located on

1 this floor.

2 When a Title Board considers a proposed  
3 initiative for the first time, the Board will follow  
4 three steps. First, Board members may ask questions  
5 of the proponents. This is to ensure the Board  
6 understands the proposal.

7 Then the Board will determine if it has  
8 jurisdiction to set title. In particular, the Board  
9 must determine if the measure complies with the  
10 single subject rule proscribed in Article V, Section  
11 1 5.5 of the Colorado constitution, and Section  
12 1-40-106.5 Colorado Revised Statutes. This is  
13 because the Board is prohibited from setting a title  
14 for a measure that contains more than one subject.

15 If the Board determines it has  
16 jurisdiction to set a title, then the Board will use  
17 a staff prepared draft for discussion purposes. A  
18 copy of the staff draft is on the table.

19 Generally we'll take all testimony first,  
20 and then the Board will discuss and vote after all  
21 testimony has been completed. A decision is reached  
22 by two of the three members of the Board.

23 Please take note we're not concerned with  
24 the merits of any proposal here. We're only  
25 concerned with the setting of title. Furthermore,

1 we're not concerned with any legal or constitutional  
2 objections to the measures except to the extent that  
3 such objections relate to the jurisdiction of the  
4 Board to set titles or to the correctness of the  
5 titles and summaries themselves. Anyone who is  
6 dissatisfied with the decision of the Title Board  
7 may file a motion for rehearing with the Secretary  
8 of State within seven calendar days.

9           In the interest of brevity, speakers may  
10 incorporate remarks made on the record in prior  
11 hearings on similar measures. And if necessary time  
12 limits can be imposed on testimony.

13           Today we have, I think, nine items on the  
14 agenda set for hearing. The first item is 2015-2016  
15 #93 Threshold for Voter Approval of Initiated  
16 Constitutional Amendments.

17           And if the proponents' representative  
18 could come forward and introduce yourself and your  
19 proponents.

20           MR. WISOR: Good morning, my name is --  
21 start again. My name is Dee Wisor. I'm a partner  
22 in the law firm of Butler Snow. I'm here  
23 representing the proponents for initiative --  
24 Proposed Initiative 93. The designated  
25 representatives for the proponents are with me, Greg

1 Brophy and Dan Gibbs are here in the front row.

2 MS. STAIERT: And on the issue of  
3 jurisdiction, do you want to tell us what you  
4 believe your single subject is.

5 MR. WISOR: Yes. Our single subject is  
6 to make it more difficult to amend the Colorado  
7 constitution.

8 MS. STAIERT: And are there any questions  
9 by the Board for the proponents on the issue of  
10 jurisdiction?

11 MR. GELENDER: No.

12 MS. STAIERT: Is there anybody here  
13 signed up to testify on this issue?

14 All right.

15 MR. GELENDER: I would move that we find  
16 the Proposed Initiative 2015-2016 #93 has a single  
17 subject and that we have jurisdiction to set a  
18 title.

19 MS. STAIERT: All right. All those in  
20 favor? I guess we need a second. I'll second it.  
21 And then all those in favor?

22 MR. GELENDER: Aye.

23 MR. ROPER: Aye.

24 MS. STAIERT: Aye.

25 All right. That takes us to the staff

1 draft. And do you have comments on the staff draft?

2 MR. WISOR: I do. Actually, if it's all  
3 right I have a proposal for you which I will  
4 distribute here momentarily.

5 MS. STAIERT: Thanks.

6 MR. WISOR: I would like to suggest this  
7 alternative that would actually, I understand,  
8 deviate a little bit from your convention of using  
9 the phrase "concerning" and again the phrase "in  
10 connection therewith." But I guess my -- my  
11 proposal is that those aren't helpful to the  
12 understanding of the measure and that what -- what I  
13 would propose is a simpler, more user friendly  
14 measure that would say an amendment to the Colorado  
15 constitution, making it more difficult to amend the  
16 Colorado constitution by requiring at least 55  
17 percent of the votes cast on a constitutional  
18 amendment for it to be approved and specifying the  
19 increase does not apply to an initiated or referred  
20 proposed constitutional amendment that only repeals  
21 a provision of the constitution.

22 MS. STAIERT: You know, we're not real  
23 wild about the "concerning" and "in connection  
24 therewith" either, but it's the format that is  
25 specified that we have to use. And I think the only

1 time we've ever deviated from it is when we don't  
2 have to connect issues.

3 So, for instance, if this was strictly a  
4 55 percent and you weren't doing something else that  
5 we had to explain in it, then I think there have  
6 been times that we have not used that language.

7 But, Jason, you can correct me if I'm  
8 wrong but...

9 MR. GELENDER: Yeah. I think the way  
10 you've described what we do when it's short enough  
11 that we would just be repeating if we tried to do a  
12 separate single subject in a trailer.

13 MS. STAIERT: Yeah. But it's -- it's  
14 never been something the Board's been really  
15 attached to either, but it's just the requirement  
16 that has been specified by, you know -- and we  
17 actually went and tried to clean that up in statute  
18 a couple years ago -- and it didn't pass -- to give  
19 ourselves a little bit more room to offer some plain  
20 language solutions, but we didn't get there, so...

21 MR. WISOR: I guess in this context they  
22 still think this is clearly a single subject.  
23 You've already determined that. And there really  
24 aren't two separate purposes here. There's only one  
25 purpose within that and that's to increase the

1 threshold for those initiatives -- for most of the  
2 initiated constitutional -- initiated or referred  
3 constitutional amendments, and then there's this  
4 exception for those that only repeal.

5 So I'd -- I'd suggest we still should  
6 consider a proposal not to use the more legalistic  
7 approach to this question, rather find something  
8 that the voters would find more user friendly.

9 MR. GELENDER: I think one of the  
10 difficulties I have with your suggestion is that,  
11 you know, there's the implication that may be more  
12 difficult to amend is entirely the single subject.  
13 But then you're also listing the exception. Of  
14 course, the exception doesn't make it more difficult  
15 to do anything.

16 So I don't know that I'm -- and we've  
17 also tended not so much -- we've tended to keep our  
18 single subjects, I think, a little bit simpler, not  
19 so much a statement of the purpose of the amendment.  
20 It's just what it concerns. What do you think?

21 MS. STAIERT: Yeah, I'm just trying to  
22 find where that language appears and how much leeway  
23 we really have.

24 MR. WISOR: I don't know if I'd call it  
25 a concern I have, but maybe twice that is not make

1 it more (inaudible).

2 Thank you. It does not make it more  
3 difficult to amend the constitution for every type  
4 of amendment but only for certain amendments,  
5 specifically those that do not seek to repeal a  
6 provision of the constitution.

7 MR. GELENDER: And so to restate it the  
8 exception is to maintain the current circumstance as  
9 to repeals.

10 MR. WISOR: Right.

11 MR. GELENDER: The only thing that  
12 you're changing here is -- is things that don't  
13 repeal. It's a way of defining what the 55 percent  
14 requirement applies to. So it's not a change in the  
15 current law.

16 MR. GELENDER: And while we're thinking  
17 about this I do have one quick question which is you  
18 have the language slightly different in 93 and 94,  
19 one saying repeal, one saying, you know, adds.  
20 Substantively you see those as identical.

21 MR. WISOR: Substantively they are the  
22 same, just different ways of coming at the issue.

23 MR. GELENDER: So it would also be  
24 accurate to just say that you don't have -- in whole  
25 and in part of any provision, so long as you're

1 removing language, you're not subject to the  
2 increased percentage of --

3 MR. WISOR: That's correct.

4 MR. GELENDER: -- what's required.

5 MR. WISOR: So jumped ahead a little bit,  
6 but when you think about 94, we don't have to have  
7 the exception.

8 MR. GELENDER: Right.

9 MR. WISOR: So if your concern is around  
10 that when we get to 94, then we ought to have that  
11 conversation again.

12 MR. GELENDER: I think my question for  
13 the other Board members would be whether we want to  
14 sort of go down the road of, you know, expressing  
15 the purpose or if we just want to say what the thing  
16 does. I think Mr. Wisor's suggested language is  
17 "more difficult to amend" is accurate -- is accurate  
18 in general. It explains the purpose of the  
19 initiative. You know, it's -- it may be more  
20 persuasive to some people, but it certainly doesn't  
21 seem to rise to the level of a catch phrase.

22 MS. STAIERT: Yeah, I don't think it's a  
23 catch phrase because I think some people will think  
24 that's great and some people will think that's awful  
25 and you're not...

1 MR. GELENDER: Right.

2 MS. STAIERT: -- suggesting an answer  
3 to the question.

4 MR. WISOR: That's right. We agree with  
5 that. We think it's just an accurate descriptor of  
6 what the measure does.

7 MS. STAIERT: Yeah.

8 MR. GELENDER: In -- in your revision or  
9 your proposal you do not have -- you don't have the  
10 language whether citizen initiated or referred by  
11 the general assembly.

12 MR. WISOR: I don't feel strongly about  
13 that. If the Board prefers that, that would be all  
14 right with me. I just -- it seemed to me  
15 constitutional amendment covers both of those  
16 things, which is why I didn't think it was necessary  
17 to have it in the title.

18 MR. GELENDER: So I think my initial  
19 inclination is rather than doing the suggested more  
20 difficult language, I would like to tweak the staff  
21 draft. I would suggest a single subject that says  
22 "an amendment to the Colorado constitution  
23 concerning the percentage of votes cast needed to  
24 approve a proposed constitutional amendment," which  
25 I think makes the point, and then a shortened

1 trailer thereafter.

2 MS. STAIERT: So I would -- I was  
3 thinking "an amendment to the Colorado constitution  
4 making it more difficult to amend the Constitution  
5 and in connection therewith."

6 MR. GELENDER: That's fine too.

7 MS. STAIERT: Then you get -- then we get  
8 the -- the purpose up in the top line. And I  
9 think -- I mean, I think "in connection therewith,"  
10 then we could do his language that says --

11 MR. GELENDER: Steve, I think you need to  
12 take out "concerning" as well.

13 MS. STAIERT: Yeah. Just... and then  
14 increasing the number of votes needed to pass a  
15 proposed constitutional amendment and get rid of --  
16 I agree, get rid of "whether citizen initiated or  
17 referred." I don't think that's something that the  
18 voters would be all that concerned about.

19 MR. ROPER: Jason, what was the language  
20 that you had proposed for that section instead of  
21 increasing the number of votes needed to pass?

22 MR. GELENDER: Well, it was -- so it  
23 would just say -- it would actually stick with how  
24 it is. I do think it's important -- not  
25 important -- but better to state that it's from a

1 majority to 55 percent. I mean, the vast majority  
2 of people I think do know that it's a simple  
3 majority vote, but doesn't -- it's still a little  
4 clearer to put it in for the handful that might not.

5           And I think with the last clause -- I  
6 think we can shorten that and say "unless the  
7 proposed constitutional amendment only removes  
8 language from the constitution" because I think when  
9 you say repeals a provision, doesn't include that  
10 possibility of just taking out a few words. It sort  
11 of suggests that you're repealing a whole subsection  
12 or paragraph or something.

13           MR. ROPER: So you're saying instead of  
14 repeals a provision, removes language?

15           MR. GELENDER: Yeah, that only -- yeah,  
16 I'm sorry, I was going to say only removes language  
17 from the constitution.

18           MR. ROPER: Instead of number of votes,  
19 do we need to say percentage of votes?

20           MR. GELENDER: Yes. That's on line 3.

21           MR. ROPER: The third line.

22           MR. GELENDER: Yep.

23           MR. ROPER: I think when you read a  
24 moment ago, you said "approve" instead of "pass."

25           MR. GELENDER: Yeah, and I don't feel

1 strongly about that. To me pass is just a little --  
2 I feel like there's a concurrent resolution if it's  
3 referred, the general assembly passes it, and then  
4 the people approve it, and this deals with that  
5 second requirement. So I think it's a little  
6 clearer to me, but I don't feel strongly about it at  
7 all.

8 MR. ROPER: At the risk of beating a dead  
9 horse, I wonder if we could consider striking "in  
10 connection therewith." I didn't understand there to  
11 be a statutory requirement that caused us to have to  
12 do that.

13 MS. STAIERT: It's -- I don't think it's  
14 statutory. It's just that the case law has, you  
15 know, consistently been in that format, and the only  
16 time we've ever deviated from that format is when we  
17 didn't have to do a trailer. So when it was so  
18 simplistic that it was like a three-line -- and I  
19 think we just as a Board sort of hesitate to do  
20 anything very different just because these are, you  
21 know, so heavily litigated.

22 But, I mean, I suppose, if you want to  
23 give it a shot. I don't know how the other Board  
24 members feel about it.

25 MR. ROPER: It seems to me that if we

1 said "in connection therewith" if we say "by  
2 increasing" and then let's see -- I have got to go  
3 down further. Yeah, just "by increasing," I think  
4 that should do it.

5 MR. GELENDER: Well, I think he's right  
6 in the sense that if we're going to go away from the  
7 "concerning," then -- then we're doing that so we  
8 can just say we might as well just make it one  
9 sentence, especially now we don't have an "and"  
10 since I've gone with that "unless" language.

11 MR. ROPER: Right. Right.

12 MS. STAIERT: Okay.

13 MR. GELENDER: So, I mean, if we are  
14 going to do it that way, then I'd just say I think  
15 that's right. "Make it more difficult to amend the  
16 Colorado constitution by increasing." I think  
17 that's fine. Do we want to -- should I move that we  
18 adopt those now so we can look at them?

19 MS. STAIERT: Sure.

20 MR. GELENDER: I move that we adopt the  
21 changes as shown on the screen.

22 MR. ROPER: Second.

23 MS. STAIERT: All those in favor?

24 Aye.

25 MR. ROPER: Aye.

1 MR. GELENDER: Aye.

2 MS. STAIERT: All right. So the way it  
3 reads now is, "An amendment to the Colorado  
4 constitution -- constitution making it more  
5 difficult to amend the Colorado constitution by  
6 increasing the percentage of votes needed to pass  
7 the proposed constitutional amendment from a  
8 majority to at least 55 percent of the votes cast  
9 unless the proposed constitutional amendment only  
10 removes language from the constitution."

11 MR. ROPER: I would put a comma between  
12 "cast" and "unless."

13 MR. GELENDER: I think that's fine.

14 MR. ROPER: Okay.

15 MS. STAIERT: All right.

16 MR. GELENDER: I would move that we set  
17 the title for Proposed Initiative 2015-16 #93 as  
18 we've amended the staff draft and now appears on the  
19 screen.

20 MR. ROPER: Second.

21 MS. STAIERT: All those in favor?

22 MR. ROPER: Aye.

23 MR. GELENDER: Aye.

24 MS. STAIERT: Aye.

25 (End of requested transcription.)



TITLE SETTING BOARD

March 2, 2016

DATE FILED: April 14, 2016 5:30 PM

Proposed Initiative 2015-2016 #96  
"Requirements for Initiated Constitutional  
Amendment"

THE BOARD

Suzanne Staiert, Chair, Deputy Secretary of State  
Jason Gelender, Office of Legislative Legal Services  
Glenn Roper, Deputy Attorney General

1 PROCEEDINGS

2 MS. STAIERT: That takes us to Proposed  
3 Initiative 2015-2016 #96.

4 MR. WISOR: Again, for the record, I'm  
5 Dee Wisor with the law firm Butler Snow representing  
6 the proponents. With me today are the designated  
7 representatives, Greg Brophy and Dan Gibbs.

8 If I might, I would suggest we begin with  
9 the drafting from 95 because this is substantially  
10 similar to 95.

11 MS. STAIERT: Is there anyone here who  
12 wishes to speak on this proposed initiative?

13 Jason, you want to do the --

14 MR. GELENDER: Sure. I move that we find  
15 the Proposed Initiative 2015-16 #96 has a single  
16 subject and that we have jurisdiction to set a  
17 title.

18 MR. ROPER: Second.

19 MS. STAIERT: All those in favor?

20 Aye.

21 MR. ROPER: Aye.

22 MR. GELENDER: Aye.

23 MR. WISOR: So the difference here is  
24 that adding words and numbers doesn't appear in the  
25 text but rather we have the exception for measures

1 which only repeal, so it's like 94.

2 MR. ROPER: 93.

3 MR. WISOR: Or 93.

4 MR. ROPER: Yeah. Maybe pull up our 93.

5 Yeah, exactly. Yes, you have to strike  
6 fifth amendment as five and six.

7 MS. STAIERT: Yeah.

8 MR. ROPER: It needs a comma after "cast"  
9 and maybe one after "constitutional amendment." Is  
10 that a typo or your cursor --

11 MS. STAIERT: So it reads now, kind of  
12 combining our thoughts from the last questions, "An  
13 amendment to the Colorado constitution making it  
14 more difficult to amend the Colorado constitution by  
15 requiring that any petition for a citizen-initiated  
16 constitutional amendment be signed by at least 2  
17 percent of the registered electors who reside in  
18 each state senate district and increasing the  
19 percentage of votes needed to pass any proposed  
20 constitutional amendment from a majority to at least  
21 55 percent of the votes cast, unless the proposed  
22 constitutional amendment only removes language from  
23 the constitution."

24 Do you have any comment on it, Mr. Wisor?

25 MR. WISOR: I think that's fine.

1                   MR. GELENDER: I move that we set the  
2 title for Proposed Initiative 2015-16 #96 as we've  
3 amended the staff draft and as it appears on the  
4 screen.

5                   MR. ROPER: Second.

6                   MS. STAIERT: All those in favor?

7                   Aye.

8                   MR. ROPER: Aye.

9                   MR. GELENDER: Aye.

10                   (End of requested transcription.)

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REPORTER'S CERTIFICATE

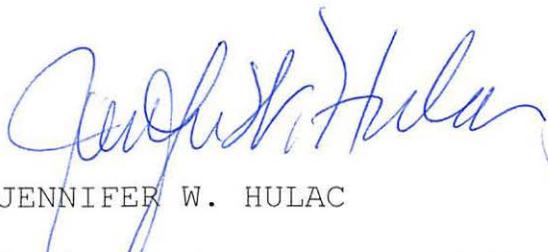
STATE OF COLORADO )  
 ) ss.  
COUNTY OF DENVER )

I, Jennifer W. Hulac, Registered Professional Reporter and Notary Public within and for the State of Colorado, do hereby certify that the foregoing constitutes a true and correct transcript of the disk provided by the Secretary of State's Office.

I further certify that I am not related to, employed by, nor of counsel for any of the parties or attorneys herein, nor otherwise interested in the result of the within action.

IN WITNESS WHEREOF, I have affixed my signature and seal this 13th day of April, 2016.

Jennifer W. Hulac  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 15924014583  
My Commission Expires November 5, 2016



JENNIFER W. HULAC  
Registered Professional Reporter