

DATE FILED: March 25, 2016

<p>SUPREME COURT OF COLORADO 2 E. 14<sup>th</sup> Ave., 4<sup>th</sup> Floor Denver, CO 80203</p>	<p>FILED IN THE SUPREME COURT</p> <p><b>MAR 24 2016</b></p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107 (2) Appeal from the Ballot Title Board</p>	<p>OF THE STATE OF COLORADO Christopher T. Ryan, Clerk</p>
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2015- 2016 #97 (Petition Signature Requirements for Initiated Constitutional Amendments)</p> <p>Petitioner: CHRIS FORSYTH</p> <p>v.</p> <p>Respondents: GREG BROPHY, DAN GIBBS and Title Board</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorney for Petitioner: None. Petitioner is proceeding pro se</p>	<p>Case Number: 16SA99</p>
<p><b>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2015-2016 #97 (PETITION SIGNATURE REQUIREMENTS FOR CONSTITUTIONAL AMENDMENTS)</b></p>	

Chris Forsyth (petitioner), registered elector of the State of Colorado,  
respectfully petitions this court, pursuant to C.R.S. § 1-40-107 (2), to review the

actions of the Title Setting Board with respect to the jurisdiction of the title board and the title, ballot title, and submission clause set for Initiative 2015-2016 #97 (Petition Signature Requirements for Initiated Constitutional Amendments).

## STATEMENT OF THE CASE

### A. Procedural history

Initiative 2015-2016 #97 was filed by respondents. A review and comment hearing was held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, respondents 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 to set a title. On March 9, 2016, petitioner filed a motion for rehearing alleging multiple grounds for the Title Board to deny a title or set a different title. The rehearing was held on March 16, 2016, at which time the Title Board denied in part the motion for rehearing to set title or to cure deficiencies in the in the title it had set.

### B. Jurisdiction

Petitioner is entitled to a review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107 (2). Petitioner timely filed a motion for rehearing

with the Title Board. *See* C.R.S. § 1-40-107 (1). Petitioner timely filed this Petition for Review pursuant to C.R.S. § 1-40-107 (2).

Attached to this Petition for Review are certified copies of the petition with the titles and submission clause of the proposed law or constitutional amendment, together with a certified copy of the motion for rehearing and of the ruling thereon. C.R.S. § 1-40-107 (2). Petitioner believes that the Title Board erred in denying petitioner's motion for rehearing.

#### GROUND FOR APPEAL

The Colorado Constitution reserves the right of the initiative to the people of the State of Colorado. Colo. Const. Art. V., Sec. 1., Para. (2). The Colorado citizen proponents must initially meet with the legislative research and drafting offices of the general assembly. Colo. Const. Art. V., Sec. 1., Para. (5). Brophy is a paid designated representative in this matter. Whoever is paying him is the proponent. Brophy was one of two people who met with the legislative research and drafting office. Because both proponents have not met with the legislative research and drafting offices of the general assembly, the Title Board did not have jurisdiction to determine a title.

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

proponents or the proposed initiative, and will lead to voter confusion. The following is an advisory list of issues to be addressed in petitioner's brief:

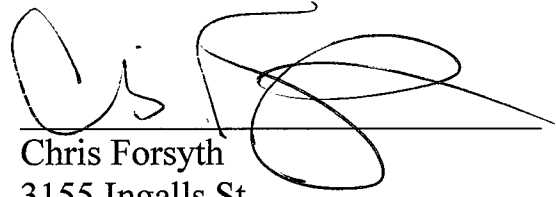
#### ADVISORY STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. The Title Board did not have jurisdiction to set title because both proponents of the measure did not meet with the legislative research and drafting offices of the general assembly.
2. The measure violates the single subject requirement of the Colorado Constitution by seeking to address separate subjects that are created by the measure.
3. The title is incomplete and thus misleading because it does not reflect the intent, effect, or complexity of the initiative. Furthermore, the title contains an impermissible catch phrase.

#### PRAYER FOR RELIEF

Petitioner respectfully requests that the Court issue a briefing schedule in this matter for the parties to submit briefs in support of their position. Once the briefs are received by the Court, petitioner requests that the Court determine that the Title Board exceeded its jurisdiction and/or set a title that is neither fair nor accurate. Petitioner respectfully requests that the title be denied due to a lack of jurisdiction or that the matter be remanded to the Title Board for a different title.

Respectfully submitted this 22nd day of March, 2016, by:

A handwritten signature in black ink, appearing to read 'Chris Forsyth', written over a horizontal line.

Chris Forsyth  
3155 Ingalls St.  
Wheat Ridge, CO 80214

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing was delivered to the following on the ~~23~~<sup>24</sup>rd day of March, 2016:

Via hand-delivery

Supreme Court of Colorado  
2 East 14<sup>th</sup> Ave.  
4<sup>th</sup> Floor  
Denver, CO 80203

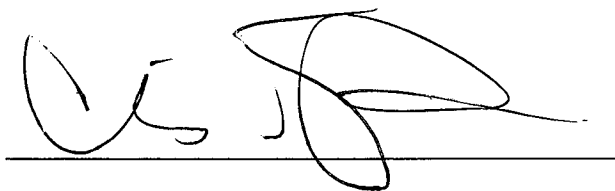
(Court closed on  
3/23/16 - snowday)  
JF

Via first-class, postage-prepaid, United States mail

Greg Brophy  
8061 South Williams Circle  
Centennial, Co

Dan Gibbs  
P.O. Box 5635  
Breckenridge, CO

Dee Wisor  
Butler Snow  
1801 California St., Suite 5100  
Denver, CO 80202

A handwritten signature in black ink, appearing to be "Dee Wisor", written over a horizontal line.



# STATE OF COLORADO

DEPARTMENT OF  
STATE

## CERTIFICATE

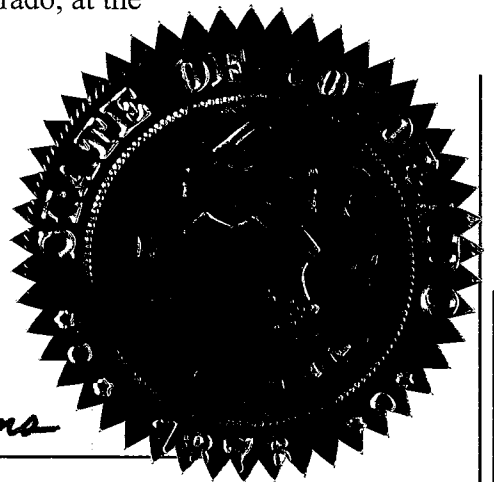
I, **WAYNE W. WILLIAMS**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, motions for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2015-2016 #97 'Petition Signature Requirements for Initiated Constitutional Amendments'".....

.....

..... **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 18<sup>th</sup> day of March, 2016.

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



RECEIVED

FEB 19 2016

S. WARD  
12:09 P.M.

2015-2016 97

Final version filed with Secretary of State

Colorado Secretary of State

BE IT ENACTED BY THE PEOPLE OF THE STATE OF COLORADO:

SECTION 1. In the constitution of the state of Colorado, Section 1 of article V is amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**Section 1. General assembly - initiative and referendum**

(2.5) IN ORDER TO MAKE IT MORE DIFFICULT TO AMEND THIS CONSTITUTION, A PETITION FOR AN INITIATED CONSTITUTIONAL AMENDMENT SHALL 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 SHALL AT LEAST EQUAL THE NUMBER OF SIGNATURES REQUIRED BY SUBSECTION (2) OF THIS SECTION. FOR PURPOSES OF THIS SUBSECTION (2.5), THE NUMBER AND BOUNDARIES OF THE SENATE DISTRICTS AND THE NUMBER OF REGISTERED ELECTORS IN THE SENATE DISTRICTS SHALL BE THOSE IN EFFECT AT THE TIME THE FORM OF THE PETITION HAS BEEN APPROVED FOR CIRCULATION AS PROVIDED BY LAW.



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2015-2016 97

Colorado Secretary of State

Amended draft in response to review and comment

~~MAKING IT HARDER TO AMEND THE CONSTITUTION COLLECT A MINIMUM NUMBER OF SIGNATURES FROM EACH SENATE DISTRICT. BE IT ENACTED BY THE PEOPLE OF THE STATE OF COLORADO:~~

~~Section 1 of article V of~~ SECTION 1. In the constitution of the state of Colorado, Section 1 of article V is amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**Section 1. General assembly - initiative and referendum**

~~(2.5) IN ORDER TO MAKE IT MORE DIFFICULT TO AMEND THIS CONSTITUTION, THE SIGNATURES REQUIRED BY SUBSECTION (2) OF THIS SECTION TO PROPOSE A PETITION FOR AN INITIATED CONSTITUTIONAL AMENDMENT SHALL INCLUDE THE SIGNATURES OF~~ 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 SUCH SENATE DISTRICT. THE SENATE DISTRICT PROVIDED THAT THE TOTAL NUMBER OF SIGNATURES OF REGISTERED ELECTORS ON THE PETITION SHALL AT LEAST EQUAL THE NUMBER OF SIGNATURES REQUIRED BY SUBSECTION (2) OF THIS SECTION. FOR PURPOSES OF THIS SUBSECTION (2.5), THE NUMBER AND BOUNDARIES OF THE SENATE DISTRICTS AND THE NUMBER OF REGISTERED ELECTORS IN SUCH THE SENATE DISTRICTS SHALL BE THOSE IN EFFECT AT THE TIME THE FORM OF THE PETITION HAS BEEN APPROVED FOR CIRCULATION AS PROVIDED BY LAW.

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2015-2016 97

Original filed with Legislative Council

Colorado Secretary of State

**MAKING IT HARDER TO AMEND THE CONSTITUTION-COLLECT A MINIMUM NUMBER OF SIGNATURES FROM EACH SENATE DISTRICT.**

**BE IT ENACTED BY THE PEOPLE OF THE STATE OF COLORADO:**

Section 1 of article V of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**Section 1. General assembly - initiative and referendum**

(2.5) IN ORDER TO MAKE IT MORE DIFFICULT TO AMEND THIS CONSTITUTION, THE SIGNATURES REQUIRED BY SUBSECTION (2) OF THIS SECTION TO PROPOSE AN INITIATED CONSTITUTIONAL AMENDMENT SHALL INCLUDE THE SIGNATURES OF REGISTERED ELECTORS WHO RESIDE IN EACH STATE SENATE DISTRICT IN COLORADO EQUAL TO AT LEAST TWO PERCENT OF THE TOTAL REGISTERED ELECTORS IN SUCH SENATE DISTRICT. FOR PURPOSES OF THIS SUBSECTION (2.5), THE NUMBER AND BOUNDARIES OF THE SENATE DISTRICTS AND THE NUMBER OF REGISTERED ELECTORS IN SUCH DISTRICTS SHALL BE THOSE IN EFFECT AT THE TIME THE FORM OF THE PETITION HAS BEEN APPROVED FOR CIRCULATION AS PROVIDED BY LAW.

**Ballot Title Setting Board**

**Proposed Initiative 2015 2016 #97<sup>1</sup>**

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

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.

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

Shall there be an amendment to the Colorado constitution 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?

*Hearing March 2, 2016:*

*Single subject approved; staff draft amended; titles set.*

*Hearing adjourned 10:30 a.m.*

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<sup>1</sup> Unofficially captioned “**Petition Signature Requirements for Initiated Constitutional Amendments**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

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MAR 09 2016 11:27 A.M.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Colorado Secretary of State

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Timothy Markham, Objector,

vs.

Greg Brophy and Dan Gibbs, Proponents.

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**MOTION FOR REHEARING ON INITIATIVE 2015-2016 #97**

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Timothy Markham, a registered elector of Colorado, through legal counsel, Recht Kornfeld P.C., objects to the Title Board's title and ballot title and submission clause set for Initiative 2015-16 #97 ("Petition Signature Requirements for Initiated Constitutional Amendments").

**I. The Title Board set a title for Initiative 2015-16 #97 on March 2, 2016.**

At the hearing held in connection with this proposed initiative, the Board designated and fixed the following ballot title and submission clause:

*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?*

**II. The titles are misleading, confusing, and prejudicial.**

A. "Making it more difficult to amend the Colorado constitution" is a prohibited catch phrase and is misleading and inaccurate for voters.

B. If the title is to describe the goal of "making it more difficult to amend the Colorado constitution," that goal should at least accurately state that initiative's actual purpose which is "making it more difficult to exercise the fundamental right of initiative for the purpose of amending the Colorado constitution."

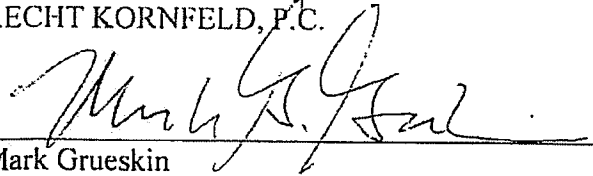
C. The title fails to describe that signature requirements per senate district will vary, even within the same election cycle, depending on the date the petition form has been approved for circulation.

D. The title fails to describe that signature requirements per senate district will vary whenever district lines are redrawn, due to reapportionment or court order, even within the same election cycle, depending on the date the petition form has been approved for circulation.

WHEREFORE, the titles set on March 2, 2016 should be stricken altogether or modified to account for the concerns raised in this Motion for Rehearing.

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of March, 2016.

RECHT KORNFELD, P.C.



Mark Grueskin  
1600 Stout Street, Suite 1000  
Denver, CO 80202  
Phone: 303-573-1900  
Email: [mark@rklawpc.com](mailto:mark@rklawpc.com)

Objector's Address:

2848 Eliot Street  
Denver CO 80211

#### CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the MOTION FOR REHEARING ON INITIATIVE 2015-2016 #97 was sent this day, March 9, 2016 via first class U.S. mail, postage pre-paid to the proponents' counsel at:

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



RECEIVED

MAR 09 2016

S. WARD

4:18 PM

COLORADO BALLOT TITLE SETTING BOARD

Colorado Secretary of State

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In re:

Initiative 2015-2016 #97

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AMENDED MOTION FOR REHEARING

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Chris Forsyth, a registered elector of the State of Colorado, objects to the Title Board's title and ballot title and submission clause set for Initiative 2015-2016 #97 pursuant to C.R.S. § 1-40-107.

On March 2, 2016, the Board set the following ballot title and submission clause:

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.

**ADVISORY GROUNDS FOR RECONSIDERATION**

A. The Colorado Constitution reserves the right of the initiative to the people of the State of Colorado. Colo. Const. Art. V., Sec. 1., Para. (2). The Colorado citizen proponents must initially meet with the legislative research and drafting offices of the general assembly. Colo. Const. Art. V., Sec. 1., Para. (5). The proponents of this measure have not revealed themselves and have not met with the legislative research and drafting offices of the general assembly. We do not know that the proponents of this measure are Colorado citizens. We do know that Greg Brophy and Dan Gibbs are the designated representative of the proponents. And we also know that Greg Brophy is getting paid for his work. He has admitted to the Independent Ethics Commission that he is being paid to perform his work. Therefore, Brophy is merely the agent of someone else. The Colorado Constitution requires that the principal - the actual proponent - meet with the legislative research and drafting offices of the general assembly. Brophy is not the principal or proponent because he has admitted that he is getting paid for his services. The proponents of this measure did not meet with the legislative research and drafting offices of the general assembly. The designated representatives, Brophy and Gibbs, met with the legislative research and drafting offices of the general assembly. There is no jurisdiction for the Title Board to set title in this matter because there are no Colorado citizen proponents of this initiative. If this initiative is to be pursued, the actual proponents must re-file this initiative, reveal themselves, and meet with the legislative research and drafting offices of the general assembly. To allow this initiative to proceed further constitutes fraud.

B. Pursuant to C.R.S. § 1-40-104, the designated representatives are to file their mailing addresses. The designated representatives failed to provide the zip codes for their addresses and therefore failed to provide the mailing address. A zip code is an essential part of the mailing address. The Title Board does not have jurisdiction to set a title. *See Hayes v. Ottke*, 293 P.3d 551 (Colo. 2013).

C. We don't know whether the title is reflective of the intent of proponents because we don't know who the proponents are. Contrary to the statutory requirements for a ballot title that is not confusing, not misleading, and reflective of the intent of the initiative, C.R.S. § 1-40-106, 107, the Board has erred by setting a title that is unfair and does not reveal that the measure:

- (1) Creates a system where one senate district can hold the rest of Colorado hostage and keep the constitution from being amended by refusing to sign a petition to put an initiative on the ballot even though all other senate districts have provided sufficient signatures;
- (2) Regards the petition process to get on the ballot. This provision does not make it more difficult to amend the constitution; it creates an additional requirement for a citizen initiative to get on the ballot.
- (3) Fails to inform voters that the requirements of the initiative are in addition to the current requirement for signatures equaling 5% of the votes for Secretary of State in the last election.

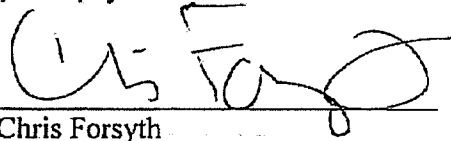
To say the initiative makes it "more difficult to amend the constitution" is inaccurate and is an impermissible catch phrase. The measure increases the technical requirement to get on the ballot.

This proposed initiative is the height of hypocrisy. Without revealing a Colorado citizen proponent for the measure, it proposes to use the current petition process to make it more difficult for subsequent petitioners to get on the ballot. In doing so, it creates a system where one senate district can hold the entire State of Colorado hostage. And it creates a system where the average citizen has no chance of getting on the ballot. Only big money special interests can deal with the requirement this initiative creates, such as the big money special interest that is paying designated representative Greg Brophy. This measure takes the process reserved for the common citizen of Colorado, mocks that process, and proposes to destroy that process. The voter needs to be more informed regarding the intent of this initiative. People don't understand that the right of the initiative is reserved to them -- the citizen. They don't understand that this initiative is to ensure that they cannot use the right of the initiative and that only big money special interests can use the initiative. That's already the problem in Colorado and this initiative would simply make that situation exponentially worse.

A more remedial title explaining the right of the initiative is necessary to accurately reflect the intent of this initiative. But most importantly, a title should be denied to this initiative because we don't know what Colorado citizen, if there is any, is

the proponent of this measure. After all, what Colorado citizen would take such a strong stance not only against himself, but his fellow citizens?

Respectfully submitted this 9th day of March, 2016, by:



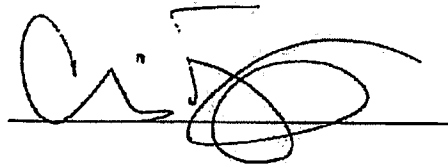
Chris Forsyth  
3155 Ingalls St.  
Wheat Ridge, CO 80214  
Phone: 303-238-8864  
Email: forsythlaw@hotmail.com

#### CERTIFICATE OF SERVICE

I hereby affirm that a true and correct copy of this Motion for Rehearing was sent this day, March 9, 2016, via first-class, postage-prepaid, United States mail to the designated representatives at:

Greg Brophy  
8061 South Williams Circle  
Centennial, CO 80122-3250

Dan Gibbs  
PO Box 5635  
Breckenridge, CO 80424





**RECEIVED**

MAR 02 2016

March 2, 2016

ELECTIONS  
SECRETARY OF STATE  
Attention: Colorado Secretary of State  
C/O Ballot title setting Board

I am a Registered Elector in Golden. Issues #93, 94,95, 96 and 97 all contain multiple subjects and the titles as drafted fail to express with clarity the subject of the measures for voters. The titles are insufficient and inadequate. A rehearing of these titles is hereby requested.

Thank you.

Dennis Polhill

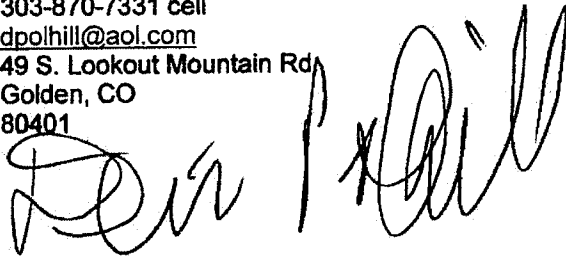
303-870-7331 cell

[dpolhill@aol.com](mailto:dpolhill@aol.com)

49 S. Lookout Mountain Rd

Golden, CO

80401

A handwritten signature in black ink, appearing to read "Dennis Polhill", written over the printed contact information.

## Ballot Title Setting Board

### Proposed Initiative 2015 2016 #97<sup>1</sup>

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

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

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?

*Hearing March 2, 2016:*

*Single subject approved; staff draft amended; titles set.*

*Hearing adjourned 10:30 a.m.*

*Rehearing March 16, 2016:*

*Motions for Rehearing relating to single subject denied; Motion for Rehearing filed by Forsyth granted only to the extent that the Board made changes to the titles.*

*Hearing adjourned 2:45 p.m.*

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<sup>1</sup> Unofficially captioned “**Petition Signature Requirements for Initiated Constitutional Amendments**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.