

SUPREME COURT OF COLORADO
2 East 14th Ave.
Denver, CO 80203

Original Proceeding
Pursuant to Colo. Rev. Stat. § 1-40-107(2)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative
2015-2016 #97 (“Petition Signature
Requirements for Initiated Constitutional
Amendments”)

Petitioner: Timothy Markham
v.
**Respondents: Greg Brophy and Dan
Gibbs**

and

**Title Board: SUZANNE STAIERT;
FREDERICK YARGER; and JASON
GELENDER**

▲ COURT USE ONLY ▲

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: mark@rklawpc.com

Case No. _____

**PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE
SETTING BOARD CONCERNING PROPOSED INITIATIVE 2015-
2016 #97 (“PETITION SIGNATURE REQUIREMENTS FOR
INITIATED CONSTITUTIONAL AMENDMENTS”)**

Timothy Markham (“Petitioner”), registered elector of the State of Colorado, through undersigned counsel, respectfully petitions this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Proposed Initiative 2015-2016 #97 (“Petition Signature Requirements for Initiated Constitutional Amendments”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative #97

Greg Brophy and Dan Gibbs (hereafter “Proponents”) proposed Initiative 2015-2016 #97 (the “Proposed Initiative”). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, the Proponents submitted final versions 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 single subjects of the Proposed Initiatives and set their titles. On March 9, 2016, Petitioner filed a Motion for Rehearing, alleging that #97 contained multiple subjects and the titles set were prejudicial, incomplete, and misleading 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.

B. Jurisdiction

Petitioner is entitled to a review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioner timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1). Additionally, Petitioner timely filed this Petition for Review within five days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107(2).

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

GROUND FOR APPEAL

In violation of C.R.S. §§ 1-40-106, -107, the title set by the Title Board is unfair, misleading, does not fairly and correctly express the true meaning of the Proposed Initiative. The following is an advisory list of issues to be addressed in Petitioner's brief:

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.

PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the title set for the Proposed Initiative is not fair and accurate and remand the Proposed Initiative to the Title Board with instructions to redraft the title to accurately and fairly represent the text of the Proposed Initiative.

Respectfully submitted this 23rd day of March, 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

ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2015-2016 #97 (“PETITION SIGNATURE REQUIREMENTS FOR INITIATED CONSTITUTIONAL AMENDMENTS”)** was sent this day, March 23, 2016, via ICCES to counsel for the Title Board at:

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

And via U.S. Mail, postage pre-paid to:

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

Dennis Polhill
49 S Lookout Mountain Rd
Golden, CO 80401

Chris Forsyth
3155 Ingalls St
Wheat Ridge, CO 80214

/s Erin Holweger



DATE FILED: March 23, 2016 11:57 AM

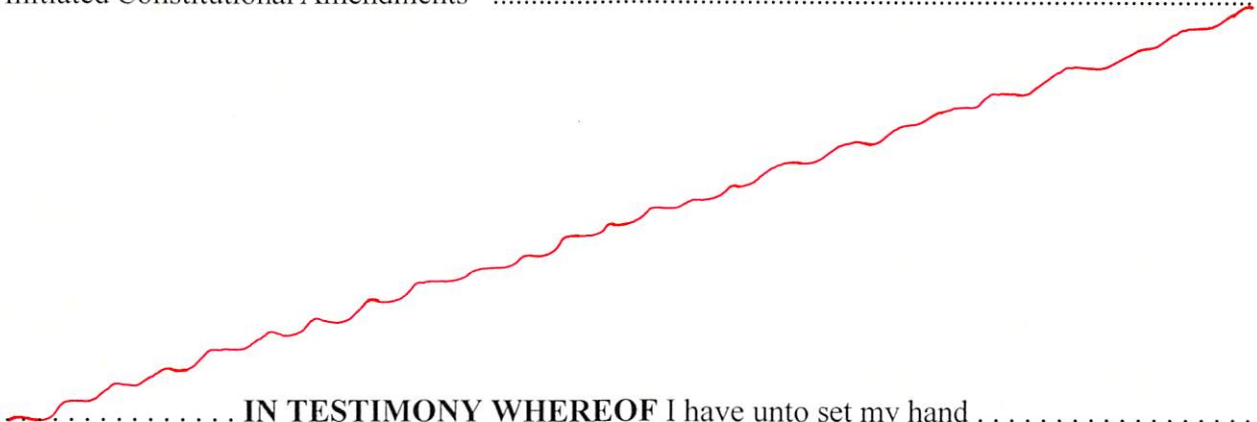
STATE OF COLORADO

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 21st day of March, 2016.



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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FEB 19 2016 12:09 P.M.

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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FEB 19 2015

S. WARD

12:09 P.M.

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 #97¹

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.*

¹ 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

Timothy Markham, Objector,

vs.

Greg Brophy and Dan Gibbs, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2015-2016 #97

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."

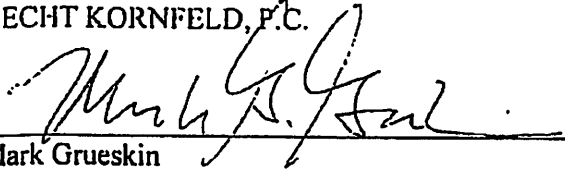
C. The title fails to describe that signature requirements per senate district will vary, even within the same election cycle, depending on the date the petition form has been approved for circulation.

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 9th 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

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

In re:

Initiative 2015-2016 #97

AMENDED MOTION FOR REHEARING

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.

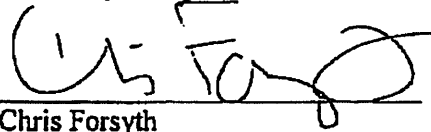
To say the initiative makes it "more difficult to amend the constitution" is inaccurate and is an impermissible catch phrase. The measure increases the technical requirement to get on the ballot.

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:



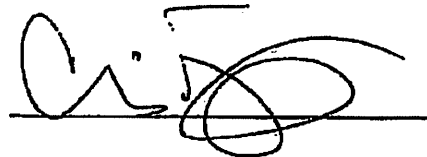
Chris Forsyth
3155 Ingalls St.
Wheat Ridge, CO 80214
Phone: 303-238-8864
Email: forsythlaw@hotmail.com

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



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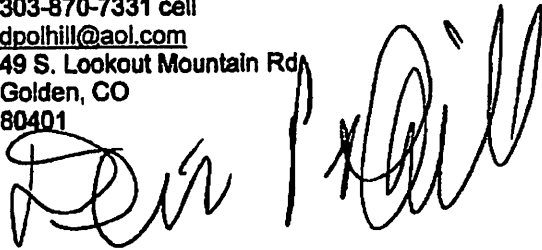
March 2, 2016

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
49 S. Lookout Mountain Rd
Golden, CO
80401

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

Ballot Title Setting Board

Proposed Initiative 2015 2016 #97¹

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.

¹ 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.