

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	<p style="text-align: center;">▲ 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 2017- 2018 #66 ("Limit on Local Housing Growth")</p> <p>Petitioner: Scott Smith</p> <p>v.</p> <p>Respondents: Daniel Hayes and Julianne Page</p> <p>and</p> <p>Title Board: Troy Bratton, Julie Pelegrin, and Melanie Snyder</p>	
<p><i>Attorney for Scott Smith:</i></p> <p>Heather R. Hanneman, #22383 Recht Kornfeld, P.C. 1600 Stout Street, Suite 1400 Denver, Colorado 80202 303-573-1900 (telephone) 303-446-9400 (facsimile) heather@rklawpc.com</p>	<p>Case Number:</p>
<p style="text-align: center;">PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2017-2018 #66 ("LIMIT ON LOCAL HOUSING GROWTH")</p>	

Scott Smith (“Petitioner”), a registered elector of the State of Colorado, through undersigned counsel, respectfully petitions this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Initiative 2017-2018 #66 (“Limit On Local Housing Growth”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative 2017-2018 #66.

Daniel Hayes and Julianne Page (“Proponents”) proposed Initiative 2017-2018 #66 (the “Proposed Initiative”). 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 December 6, 2017, at which time a title was set for 2017-2018 #66. On December 13, 2017, Petitioner Scott Smith filed a Motion for Rehearing, alleging that #66 violated the single subject requirement and that the directors of the Office of Legislative Council and the Office of Legislative Legal Services should not have waived the requirement for a review and comment hearing on Initiative #66. The rehearing was held on December 20, 2017, at which time the Title Board denied 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 version of the initiative filed by the Proponents; (2) the original ballot title set for this measure; (3) the Motion for Rehearing filed by the Petitioner; and (4) the ruling on the Motion for Rehearing as reflected by the title and ballot title and submission clause set by the Board (attached as App. 1). Petitioner believes that the Title Board erred in denying certain aspects of the Motion for Rehearing. As such, this matter is properly before this Court.

GROUND FOR APPEAL

The title set by the Title Board violated the legal requirements imposed on the Board to comply with the single subject requirement in Article V, §1(5.5) of the Colorado Constitution. The following is an advisory list of issues to be addressed in Petitioner's brief:

1. Whether Initiative #66 violates the single subject requirement for ballot initiatives by imposing local growth limits as well as (1) establishing statutory requirements for the percentage of signers of initiative and referendum petitions that contradict (and thus violate) the existing constitutional percentages in Colo. Const., art., V, sec. 1(9) for local initiatives and referenda and (2) attempting to supersede the general election-related authority for home rule jurisdictions found in Colo. Const., art. XX, sec. 6.

2. Whether the directors of the Office of Legislative Council and the Office of Legislative Legal Services erroneously waived the requirement for a review and comment hearing on Initiative #66.

PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the Title Board lacked jurisdiction to set title for the Proposed Initiative and order the Board to return this measure to the Proponents, in light of the initiative's failure to comply with the single subject requirement in the Colorado Constitution.

Respectfully submitted this 27th day of December, 2017.

s/ Heather Hanneman

Heather R. Hanneman, #22383

RECHT KORNFELD, P.C.

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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 2017-2018 #66 (“LIMIT ON LOCAL HOUSING GROWTH”)** was sent this day, December 27th, 2017, to the following as indicated below:

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

Via ICCES

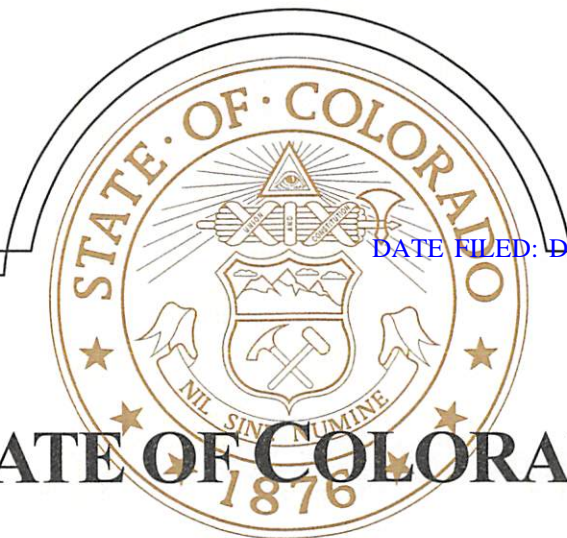
Daniel Hayes
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*Via Email and United States
Mail, Postage Prepaid*

Julianne Page
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720-891-7346
julipage13@gmail.com

*Via Email and United States
Mail, Postage Prepaid*

/s Erin Holweger _____



DATE FILED: December 27, 2017 4:11 PM

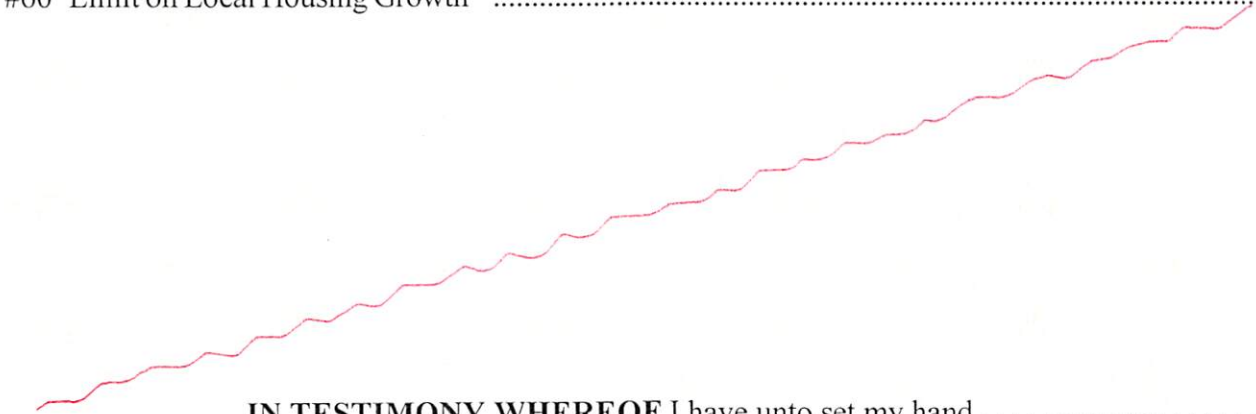
STATE OF COLORADO

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 the filed text, initial fiscal impact statement, abstract, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2017-2018 #66 'Limit on Local Housing Growth'"



..... **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 26th day of December, 2017.

Wayne W. Williams
SECRETARY OF STATE



RECEIVED

NOV 15 2017 S.WARD
11:15 P.M.

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

Colorado Secretary of State

SECTION 1. In the Colorado Revised Statutes, add 39-22-510 as follows:

A PROPOSITION ALLOWING VOTERS TO ENACT RESIDENTIAL GROWTH PROPOSALS ON A COUNTY-WIDE BASIS AND ENACTING SUCH FOR TWO YEARS IN EIGHT COUNTIES BEGINNING 2019.

(1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ANNUAL GROWTH" MEANS THAT WHICH OCCURS IN A CALENDAR YEAR MEASURED IN THE TOTAL NUMBER OF HOUSING UNITS ABOVE THAT FOR THE PREVIOUS YEAR.

(b) "HOUSING UNIT" MEANS A BUILDING OR ANY PORTION OF A BUILDING DESIGNED FOR OCCUPANCY AS COMPLETE, INDEPENDENT LIVING QUARTERS FOR ONE OR MORE PERSONS, HAVING DIRECT ACCESS FROM THE OUTSIDE OF THE BUILDING OR THROUGH A COMMON HALL AND HAVING LIVING, SLEEPING, KITCHEN, AND SANITARY FACILITIES FOR THE EXCLUSIVE USE OF THE OCCUPANTS. A DETACHED HOME HAS ONE HOUSING UNIT WHEREAS AN APARTMENT BUILDING WITH EIGHTY APARTMENTS HAS EIGHTY HOUSING UNITS.

(c) "LOCAL COUNTY" MEANS THE COUNTY, WHETHER STATUTORY OR HOME RULE, AS A SEPARATE LOCAL GOVERNMENT WITHIN SUCH COUNTY AS IN THE UNINCORPORATED COUNTY.

(d) "LOCAL GOVERNMENT" MEANS A CITY, TOWN, CITY AND COUNTY, OR LOCAL COUNTY, WHETHER STATUTORY OR HOME RULE.

(e) "PRIVATELY OWNED RESIDENTIAL HOUSING" MEANS A SUMMATION OF HOUSING UNITS WHICH ARE RESIDENTIALLY ZONED OR OTHERWISE INTENDED FOR PRIVATE RESIDENTIAL USE. THOSE OWNED BY A FEDERAL, STATE OR LOCAL GOVERNMENT ENTITY, OR AN EDUCATIONAL, MEDICAL, OR PENAL FACILITY ARE EXCLUDED AS ARE COMMERCIAL ZONED ACCOMMODATIONS SUCH AS HOTELS AND MOTELS.

(2) BEGINNING JANUARY 1, 2019, THE ELECTORS OF EVERY CITY, TOWN, CITY AND COUNTY, OR LOCAL COUNTY, WHETHER STATUTORY OR HOME RULE, RESERVE THE RIGHT TO LIMIT HOUSING GROWTH BY INITIATIVE AND REFERENDUM WITHOUT LEGISLATIVE INHIBITION OR PENALTY. THIS RIGHT IS FURTHER RESERVED ON A COUNTYWIDE BASIS WHEREBY ELECTORS THROUGHOUT A COUNTY MAY ELECT TO LIMIT HOUSING GROWTH UNIFORMLY IN ALL LOCAL GOVERNMENTS AND ANY PART OF SUCH, WHETHER STATUTORY OR HOME RULE, WITHIN SUCH COUNTY BY INITIATIVE AND REFERENDUM.

(3) PRIVATELY OWNED RESIDENTIAL HOUSING GROWTH IN THE CITY AND COUNTIES OF BROOMFIELD AND DENVER, AND COUNTYWIDE IN THE COUNTIES OF ADAMS, ARAPAHOE, BOULDER, DOUGLAS, EL PASO, JEFFERSON, LARIMER, AND WELD, INCLUDING ALL LOCAL GOVERNMENTS WITHIN SUCH COUNTIES, SHALL NOT EXCEED ONE PERCENT ANNUALLY FOR THE YEARS 2019 AND 2020. IN SAID COUNTIES EACH LOCAL GOVERNMENT AND ANY PART OF SUCH, WHETHER STATUTORY OR HOME RULE, AND EACH SAID CITY AND COUNTY SHALL ALLOT BUILDING PERMITS SO THAT HOUSING GROWTH DOES NOT EXCEED A ONE PERCENT ANNUAL GROWTH RATE IN THE TOTAL NUMBER OF HOUSING UNITS IN EACH SAID YEAR. BEGINNING 2021 SUCH GROWTH LIMITATIONS MAY BE AMENDED OR REPEALED BY INITIATIVE AND REFERENDUM OR OTHERWISE SHALL REMAIN IN EFFECT.

(4) NO PERMITS TO BUILD NEW PRIVATELY OWNED RESIDENTIAL HOUSING UNITS SHALL BE ISSUED WITHIN SAID COUNTIES INCLUDING ALL LOCAL GOVERNMENTS CONTAINED WITHIN OR ANY PART OF SUCH AND SAID CITY AND COUNTIES BEGINNING WITH THE DECLARATION OF VOTER APPROVAL OF THIS SECTION UNTIL JANUARY 1, 2019.

(5) INITIATIVE AND REFERENDUM FOR THIS SECTION:

(a) SIGNATURE REQUIREMENTS FOR INITIATIVE AND REFERENDUM FOR ENACTING, REPEALING, OR AMENDING PROPOSALS TO REGULATE THE GROWTH OF PRIVATELY OWNED RESIDENTIAL HOUSING FOR LOCAL GOVERNMENTS, WHETHER STATUTORY OR HOME RULE, SHALL BE FIVE PERCENT OF THE VOTERS PARTICIPATING IN THE MOST RECENT GENERAL ELECTION IN SUCH LOCAL GOVERNMENT. SUCH PROPOSALS ON A COUNTYWIDE BASIS SHALL BE FIVE PERCENT OF THE TOTAL NUMBER OF

VOTERS PARTICIPATING IN THE MOST RECENT ELECTION FOR SECRETARY OF STATE IN SUCH COUNTY.

(6) IF ANY PROVISION OF THIS SECTION IS HELD INVALID, THE REMAINDER OF THIS SECTION SHALL REMAIN UNIMPAIRED.

Proponents:

**Daniel Hayes
5115 Easley Rd
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720 581 2851
futuredenver@gmail.com**

**Julianne Page
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**Colorado
Legislative
Council
Staff**

**Initiative # 66
INITIAL FISCAL
IMPACT STATEMENT**

Date: December 5, 2017

Fiscal Analyst: Larson Silbaugh (303-866-4720)

LCS TITLE: LIMIT ON LOCAL HOUSING GROWTH

Note: This *initial* fiscal impact estimate has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff may revise this estimate for the Blue Book Voter Guide if new information becomes available.

Summary of Measure

The initiative limits residential housing growth, as measured by locally-issued housing permits, to one percent in 2019 and 2020 in the following 10 counties and consolidated city-county governments: Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer, and Weld. Beginning with 2021, the growth limit may be amended or repealed by county voters.

The measure permits voters in both municipalities and counties to set local housing growth limits. A voter approved countywide growth limit is also applicable to residential housing growth in municipalities within that county. Finally, the measure specifies the number of signatures needed to place, modify, or repeal local ballot initiatives concerning housing limits.

Background

Zoning and building permit decisions are determined by counties, municipalities, and consolidated city-county governments (Broomfield and Denver). Counties and municipalities adopt zoning and land use plans, which allow certain types of development in specific areas. Local governments issue building permits consistent with those zoning and land use plans. Some counties and municipalities issue more building permits than others.

Based on the number of housing units estimated by the U.S. Census Bureau between 2010 and 2016 for the 10 named counties, the growth limit would have been binding 31 out of 60 times. Estimated housing unit growth is shown in Table 1, for the 10 counties named in the measure.

	2010	2011	2012	2013	2014	2015
Adams County	0.2%	0.3%	0.4%	0.7%	0.6%	1.1%
Arapahoe County	0.4%	0.0%	0.5%	1.0%	0.5%	0.9%
Boulder County	0.4%	0.4%	1.1%	1.2%	1.0%	1.0%
Broomfield	0.9%	0.9%	8.6%	3.4%	3.0%	1.6%
Denver	0.2%	0.7%	1.8%	1.9%	1.8%	2.4%
Douglas County	2.2%	1.7%	3.0%	3.3%	2.7%	2.6%
El Paso County	0.7%	0.9%	1.7%	1.9%	1.0%	1.2%

	2010	2011	2012	2013	2014	2015
Jefferson County	0.1%	0.3%	0.4%	0.6%	1.0%	0.7%
Larimer County	0.7%	0.8%	1.2%	1.6%	1.7%	1.7%
Weld County	0.6%	0.6%	1.1%	1.6%	2.4%	2.8%
Number exceeding 1.0% growth	1	1	7	8	7	7

Source: U.S. Census Bureau, 2016 Annual Estimates of Housing Units.

Note: Several instances of annual growth round up to 1.0 percent; however, annual growth did not exceed the 1.0 percent limit in the measure.

Local Government Impact

The measure will have an indeterminate local government revenue and expenditure impact. Beginning with 2021, limitations on residential housing unit growth in 10 front range counties may remain binding in some counties or municipalities and not in others. Other housing growth limits on local government enacted by voters may be binding in some years and not in others. The total impact is dependant on the growth patterns and development plans adopted in each community.

Local government revenue. To the extent that there are fewer building permits issued within the 10 front range counties for 2019 and 2020, these specified local governments will receive less revenue from building permits, property taxes on new construction, and from use tax revenue from building materials. If demand for housing continues to increase while the supply is limited, housing values may increase. Increased housing prices may increase local property tax revenue.

To the extent that housing growth is redistributed to other communities, local governments will receive more revenue from building permits, use taxes, and property taxes on new construction compared with what would have occurred without the measure. The revenue impacts will be different in each local district.

Local government expenditures. Local governments provide services to new housing units and new residents. New houses need services such as roads, utilities, and police and fire protection. Additional residents send students to schools. Fewer new homes will reduce the future amount of services required and local government expenditures. The spending impacts will differ by local jurisdiction.

Economic Impact

The value and price of existing housing units may increase in communities where there are binding growth limits, impacting potential home buyers, and existing homeowners, landlords and tenants. Limits on housing permits will also impact the geographic distribution of construction employment, retail trade, and population between different areas within Colorado. Assuming the measure's 1.0 percent growth limits are binding for some counties, the measure will shift construction employment and activity from counties that meet the 1.0 percent limit to jurisdictions where the 1.0 percent limit is not binding. Accordingly, some construction employment and activity will shift from the 10 named counties to neighboring counties without a growth limit. To the extent that some development does not occur anywhere in the state because of the 1.0 percent limits, total construction activity and employment may decrease because of the measure.

Initiative #66

Effective Date

If approved by voters, the ballot initiative takes effect upon proclamation of the Governor within 30 days of the official canvas of votes at the 2018 general election.

State and Local Government Contacts

Municipalities
Local Affairs

Colorado Housing Finance Agency
Counties

Abstract of Initiative 66: Limit on Local Housing Growth

This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of December 2017, identifies the following impacts:

The abstract includes estimates of the fiscal impact of the initiative. If this initiative is to be placed on the ballot, Legislative Council Staff will prepare new estimates as part of a fiscal impact statement, which includes an abstract of that information. All fiscal impact statements are available at www.ColoradoBlueBook.com and the abstract will be included in the ballot information booklet that is prepared for the initiative.

Local government revenue and spending. In jurisdictions with a binding growth limit, the proposed initiative will reduce local government revenue from building permits, property tax revenue on new construction, and use taxes starting in FY 2018-19. To the extent that property values increase because of the measure, local governments may receive additional property tax revenue. In addition, local government spending will be reduced because there will be less demand for services provided to new homes and residents such as roads, utilities, and fire and police protection. Should the proposed initiative shift growth to other communities, those local governments will receive more revenue from the additional development and spend more to provide services to the new residents.

Economic impacts. The value and price of existing housing units may increase in communities where there are binding growth limits, impacting potential home buyers, and existing homeowners, landlords and tenants. Limits on housing permits will also impact the geographic distribution of construction employment, retail trade, and population between different areas within Colorado. Assuming the measure's 1.0 percent growth limits are binding for some counties, the measure will shift construction employment and activity from counties that meet the 1.0 percent limit to jurisdictions where the 1.0 percent limit is not binding. Accordingly, some construction employment and activity will shift from the 10 named counties to neighboring counties without a growth limit. To the extent that some development does not occur anywhere in the state because of the 1.0 percent limits, total construction activity and employment may decrease because of the measure.

Ballot Title Setting Board

Proposed Initiative 2017-2018 #66¹

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

A change to the Colorado Revised Statutes concerning limitations on the growth of housing, and, in connection therewith, permitting the electors of every city, town, city and county, or county to limit housing growth by initiative and referendum; permitting county voters by initiative and referendum to limit housing growth uniformly within the county, including all or parts of local governments within the county; establishing procedural requirements for initiatives for local governments, whether statutory or home rule, concerning limits on housing growth; and for the city and counties of Broomfield and Denver, and in the counties of Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer, and Weld: 1) prohibiting the issuance of new permits for privately owned housing units by local governments located in whole or in part within such counties and such cities and counties until January 1, 2019, 2) limiting the growth of privately owned residential housing units to one percent annually starting in 2019, and 3) permitting the one percent growth limitation to be amended or repealed by initiative and referendum commencing in 2021.

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

Shall there be a change to the Colorado Revised Statutes concerning limitations on the growth of housing, and, in connection therewith, permitting the electors of every city, town, city and county, or county to limit housing growth by initiative and referendum; permitting county voters by initiative and referendum to limit housing growth uniformly within the county, including all or parts of local governments within the county; establishing procedural requirements for initiatives for local governments, whether statutory or home rule, concerning limits on housing growth; and for the city and counties of Broomfield and Denver, and in the counties of Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer, and Weld: 1) prohibiting the issuance of new permits for privately owned housing units by local governments located in whole or in part within such counties and such cities and counties until January 1, 2019, 2) limiting the growth of privately owned residential housing units to one percent annually starting in 2019, and 3)

¹ Unofficially captioned “Limit on Local Housing Growth” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board

permitting the one percent growth limitation to be amended or repealed by initiative and referendum commencing in 2021?

Hearing December 6, 2017:

Single subject approved; staff draft adopted; titles set.

Hearing adjourned 1:12 p.m.

RECEIVED 3:52 P.M.

DEC 13 2017 S.WARD

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Colorado Secretary of State

Scott E. Smith, Objector,

vs.

Daniel Hayes and Julianne Page, Proponents.

**MOTION FOR REHEARING ON INITIATIVE 2017-2018 #66
("Limit on Local Housing Growth")**

On behalf of Scott Smith ("Objector"), a registered elector of the State of Colorado, the undersigned counsel hereby submits this Motion For Rehearing for Initiative 2017-2018 #66 pursuant to C.R.S. § 1-40-107, and as grounds therefore states as follows:

The Board set the following ballot title and submission clause for Initiative 2017-18 #66 on December 6, 2016:

Shall there be a change to the Colorado Revised Statutes concerning limitations on the growth of housing, and, in connection therewith, permitting the electors of every city, town, city and county, or county to limit housing growth by initiative and referendum; permitting county voters by initiative and referendum to limit housing growth uniformly within the county, including all or parts of local governments within the county; establishing procedural requirements for initiatives for local governments, whether statutory or home rule, concerning limits on housing growth; and for the city and counties of Broomfield and Denver, and in the counties of Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer, and Weld: 1) prohibiting the issuance of new permits for privately owned housing units by local governments located in whole or in part within such counties and such cities and counties until January 1, 2019, 2) limiting the growth of privately owned residential housing units to one percent annually starting in 2019, and 3) permitting the one percent growth limitation to be amended or repealed by initiative and referendum commencing in 2021?

For two reasons, the Title Board lacks the jurisdiction to consider this initiative.

A. Initiative #66 Violates the Single Subject Requirement.

While the measure appears to concern rights to limit housing growth, it contains separate subjects, in violation of section 1 (5.5) of article V of the Colorado Constitution and section C.R.S. § 1-40-106.5.

Section 1 (5.5) of article V of the Colorado Constitution provides that:

No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls.

See also In re Proposed Initiative on "Public Rights in Water II", 898 P.2d 1076, 1078 (Colo. 1995) (the constitutional amendment forbids the joining of "incongruous subjects in the same measure" thereby ensuring that "each proposal depends on its own merits for passage."); In re Proposed Initiative 1996-4, 916 P.2d 528, 532 (Colo. 1996) ("Grouping the provisions of a proposed initiative under a broad concept that potentially misleads voters will not satisfy the single subject requirement.").

Initiative 2017-2018 #66's subjects include

1. Limits on housing growth through initiatives and referenda as well as specific limits on housing growth for the cities and counties of Broomfield and Denver, and the counties of Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer, and Weld;
2. New requirements for the number of, as well as the means of calculating, the voters who must sign initiative and referendum petitions (5% of "voters participating in the most recent general election in such local government"), contrary to existing constitutional authority of cities and towns, found in Colo. Const., art., V, sec. 1(9), to set the number of signatures required for referendum petitions (not more than 10% of "registered electors... in any city, town, or municipality") and initiative petitions (not more than 15% of "registered electors... in any city, town, or municipality"); and
3. New restrictions on home rule powers of cities and towns, pursuant to Colo. Const., art. XX, sec. 6 dealing with municipal control of all matters pertaining to municipal elections, in light of the specification of a statutory formula for calculating the required number of signatures to place initiatives and referenda on a ballot.

These provisions in the initiative violate the single subject requirement by making a procedural change to the home rule authority of municipalities regarding initiatives and referenda. *See In re Title, Ballot Title & Submission Clause for Proposed Initiative 2001-02 No. 43, 46 P.3d 438, 445-446 (Colo. 2002) (inclusion of provision in proposed initiative dealing with "petition procedures" relating to initiatives and referenda violated the State Constitution's single-subject requirement); Matter of Title, Ballot Title & Submission Clause, & Summary With Regard to a Proposed Petition for an Amendment to Constitution of State Adding Section 2 to Article VII (Petition Procedures), 900 P.2d 104, 109 (Colo. 1995) (initiative containing provisions affecting the rights of initiative, referendum, and recall, dealt with "petition procedures," violating single subject requirement); Matter of Title, Ballot Title, & Submission Clause for 2013-2014 #76, 333 P.3d 76, 84-85 (Colo. 2014) (initiative which changed manner in*

which recall elections for state and local officers would be conducted and instituting new constitutional right to recall non-elected officers violated single subject requirement).

B. A Review and Comment Hearing Was Required to be Held on Initiative #66.

The directors of the Office of Legislative Council and the Office of Legislative Legal Services waived the requirement for a review and comment hearing on Initiative #66. Letter from Sharon Eubanks and Mike Mauer, dated Oct. 18, 2017, citing C.R.S. § 1-40-105(2) (attached hereto).

The issues, addressed above as single subject violations, establish that #66 attempts to *statutorily* limit the *constitutional* authority granted to municipalities to determine the number of signatures required for initiative and referendum petitions. Certainly, these issues would have been addressed at a review and comment hearing on #66. Because the legislative offices waived the review and comment hearing, these issues were not ever addressed with the Proponents or for the benefit of the public.

The change from a constitutional measure (Initiative #4) to a statutory measure (Initiative #66) made these provisions relating to the underlying public support for an initiative or a referendum substantive matters to be addressed in a review and comment hearing. Arguably, Initiative #4's status as a constitutional amendment did not require that the affected initiative and referendum petitions comply with the home rule and initiative provisions of the existing Constitution. And in fact, this issue was not addressed in the review and comment memorandum on Initiative #4.¹ No such argument can be made about the difference attributable to converting this measure to a statutory change.

The legislative offices erred by issuing their waiver letter, and as such, the Title Board "has no authority to fix a title to a proposed amendment." *In re Proposed Initiated Constitutional Amend. Concerning Limited Gaming in the Town of Idaho Springs*, 830 P.2d 963, 967-68 (Colo. 1992), citing *In re Title, Ballot Title and Submission Clause, and Summary Adopted May 16, 1990*, 797 P.2d 1283, 1287-88 (Colo. 1990).

Accordingly, the Objector respectfully requests that a rehearing be set pursuant to C.R.S. § 1-40-107.

¹ See November 3, 2016 Memorandum prepared by legislative staff on Initiative 2017-2018 #4 <https://leg.colorado.gov/sites/default/files/initiatives/2017-2018%25234.pdf> (last viewed Dec. 13, 2017).

Respectfully submitted this 13th day of December, 2017.

s/Heather R. Hanneman
Heather R. Hanneman, #22383
Recht Kornfeld, P.C.
1600 Stout Street, Suite 1000
Denver, Colorado 80202
303-573-1900 (telephone)
303-446-9400 (facsimile)
heather@rklawpc.com

Objector's Address:

1172 Greenland Forest Dr.
Monument, CO 80132

CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the Motion For Rehearing for Initiative 2017-2018 #66, was sent this 13th day of December, 2017 by United States Mail, postage prepaid, to proponents at:

Daniel Hayes
5115 Easley Rd
Golden CO 80403
720-581-2851
futuredenver@gmail.com

Julianne Page
3565 Kline St.
Wheat Ridge CO 80033
720-891-7346
julipage13@gmail.com

s/Erin Holweger

Ballot Title Setting Board

Proposed Initiative 2017-2018 #66¹

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

A change to the Colorado Revised Statutes concerning limitations on the growth of housing, and, in connection therewith, permitting the electors of every city, town, city and county, or county to limit housing growth by initiative and referendum; permitting county voters by initiative and referendum to limit housing growth uniformly within the county, including all or parts of local governments within the county; establishing procedural requirements for initiatives for local governments, whether statutory or home rule, concerning limits on housing growth; and for the city and counties of Broomfield and Denver, and in the counties of Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer, and Weld: 1) prohibiting the issuance of new permits for privately owned housing units by local governments located in whole or in part within such counties and such cities and counties until January 1, 2019, 2) limiting the growth of privately owned residential housing units to one percent annually starting in 2019, and 3) permitting the one percent growth limitation to be amended or repealed by initiative and referendum commencing in 2021.

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

Shall there be a change to the Colorado Revised Statutes concerning limitations on the growth of housing, and, in connection therewith, permitting the electors of every city, town, city and county, or county to limit housing growth by initiative and referendum; permitting county voters by initiative and referendum to limit housing growth uniformly within the county, including all or parts of local governments within the county; establishing procedural requirements for initiatives for local governments, whether statutory or home rule, concerning limits on housing growth; and for the city and counties of Broomfield and Denver, and in the counties of Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer, and Weld: 1) prohibiting the issuance of new permits for privately owned housing units by local governments located in whole or in part within such counties and such cities and counties until January 1, 2019, 2) limiting the growth of privately owned residential housing units to one percent annually starting in 2019, and 3)

¹ Unofficially captioned “**Limit on Local Housing Growth**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board

permitting the one percent growth limitation to be amended or repealed by initiative and referendum commencing in 2021?

Hearing December 6, 2017:

Single subject approved; staff draft adopted; titles set.

Hearing adjourned 1:12 p.m.

Rehearing December 20, 2017:

Motion for Rehearing denied.

Hearing adjourned 10:13 a.m.