DATE FILED: January 31, 2017 6:54 PM

SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203	
In Re The Matter of The Title, Ballot Title, and Submission Clause for Proposed Initiative 2017-2018 #4 **Petitioner:** D. Michael Kopp, v. **Respondents:** Daniel Hayes and Julianne Page, and **Title Board:** Suzanne Staiert, Sharon Eubanks, and Glenn Roper	▲ **COURT USE ONLY** ▲
Attorneys for Petitioner: Jason R. Dunn, #33011 David B. Meschke, #47728 BROWNSTEIN HYATT FARBER SCHRECK LLP 410 Seventeenth Street, Suite 2200 Denver, CO 80202-4432 Tel: 303.223.1100; Fax: 303.223.1111 jdunn@bhfs.com; dmeschke@bhfs.com	Case Number: 2017SA6

PETITIONER'S OPENING BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 7,232 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

For each issue raised by the appellant, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

In response to each issue raised, the appellee must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant'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 or 28.1, and C.A.R. 32.

/s/ Jason R. Dunn

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes

Other Authorities

Petitioner D. Michael Kopp, registered elector of the State of Colorado, through his undersigned counsel, submits his Opening Brief in this original proceeding challenging the actions of the Title Board on Proposed Initiative 2017-2018 #4 (unofficially captioned "Limit on Local Housing Growth").

ISSUES PRESENTED FOR REVIEW

A. Whether the Title Board erred in ruling that the measure contains a single subject as required by Article V, § 1(8) of the Colorado Constitution and C.R.S. § 1-40-105(4).

B. Whether the measure's abstract fails to comply with the requirements of C.R.S. § 1-40-105.5(3).

STATEMENT OF THE CASE

This original proceeding is brought pursuant to section 1-40-107(2), C.R.S., as an appeal from a decision of the Ballot Title Setting Board ("Title Board") to set a title on Proposed Initiative 2017-2018 #4 ("Proposed Initiative #4" or "the Initiative").

Proposed Initiative #4 seeks to amend article XVIII of the Colorado Constitution in three primary ways. First, the Initiative seeks to limit housing growth in the Front Range counties of Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer, and Weld, and the city and counties of Broomfield and Denver by: (1) prohibiting the issuance of new housing permits for privately owned units until January 1, 2019; (2) limiting the growth of privately owned residential housing units to one percent annually starting in 2019; and (3) prohibiting until 2021 any amendment to the one percent growth limit. Initiative §§ 7(2)–(3).

Second, the Initiative seeks to fundamentally alter the long-standing relationship between home-rule municipalities and counties by granting to county electors the right to limit housing growth across a county, through initiative or referendum, including within any home-rule municipality. Initiative § 17(1).

Third, the Initiative seeks to amend the statutory initiative process by permitting only one challenge to an initiative's petition form

and only one challenge to the sufficiency of signatures for measures that relate to housing growth. Initiative § 17(4).

Respondents Daniel Hayes and Julianne Page filed Proposed Initiative #4 on October 24, 2016. Following the required review and comment hearing pursuant to section 1-40-105(1), Respondents filed an amended version of the measure with the Title Board on November 23, 2016. The Title Board first considered the measure on December 7, 2016, and rejected it on the basis that it violated the single-subject requirement. Respondents subsequently resubmitted an amended version of the measure. The Title Board conducted a second public hearing on the Initiative on December 21, 2016, where it determined, in a 2-1 vote, that the measure constituted a single subject and set title.

Petitioner Kopp subsequently filed a timely Motion for Rehearing on December 28, 2016, contending that the measure (1) impermissibly contains multiple subjects in violation of the single-subject requirement; (2) includes a ballot title that does not adequately describe the measure and is ambiguous; and (3) is accompanied by an abstract that fails to meet the requirements of section 1-40-105.5(3). The Title Board

considered it, along with a motion for rehearing filed by objector Scott E. Smith, and denied both motions at its January 4, 2017 rehearing, except to the extent the Title Board amended the title. The vote on whether the Initiative violated the single-subject requirement was again 2-1. (*See* Exhibit 1, Transcript of the January 4, 2017 Rehearing, at 25:18–26:1).[1]

Petitioner Kopp subsequently filed a timely petition for review in this Court on January 11, 2017, as did objector Smith.

SUMMARY OF THE ARGUMENT

Proposed Initiative #4 violates the constitutional single-subject requirement because it contains at least three primary subjects that lack a necessary or proper connection. First, the measure's main facet is to create a one percent limit on housing growth in the ten Front Range counties, including the cities and counties of Denver and Broomfield. Initiative § 17(2). Second, the Initiative would allow any county, through the initiative and referendum process, to enact housing

[1] Audio recording Title Board's January 4, 2017 rehearing can be found at http://www.sos.state.co.us/pubs/info_center/audioArchives.html.

growth limitations on any home-rule municipalities within the county's jurisdiction, which is a fundamental change to the long-standing constitutional home-rule relationship in Colorado. Initiative § 17(1). Third, the measure seeks to severely restrict the right of citizens to challenge any initiative or referendum that relates to housing growth by allowing only one challenge to either the petition format or the sufficiency of any signatures gathered for such a measure. Initiative § 17(4). This third subject also would severely limit the right to appeal because it allows for only an expedited judicial determination when a proposed measure is challenged on the petition. All three subjects are major provisions that lack a necessary or proper connection.

These three subjects also present the very dangers of omnibus measures because: (1) the measure may pass by garnering support from potentially competing factions that may be in favor of only certain parts of the measure, and (2) the measure may cause voter surprise because it contains parts that are hidden or coiled up in the folds of the text. Therefore, because the Initiative contains multiple subjects, the Title Board majority's decision was in error and should be reversed.

In addition, the abstract written by the Office of Legislative Council and approved by the Title Board pursuant to section 1-40-105.5 fails to comply with the requirements of that section. Starting this initiative cycle, each proposed initiative must include an abstract that details the measure's fiscal impact. § 1-40-105.5(2). The clear legislative intent behind the abstract include increased transparency and allowing voters the opportunity to assess a proposed measure's fiscal impact *before* they sign a petition to put the measure on the ballot. The abstract is supposed to be substantially similar to what is included in the Blue Book and the fiscal notes legislators receive.

Proposed Initiative #4 is the first measure to receive an abstract under the new statute, yet it fails to meet even the most basic requirements or provide voters with a modicum of meaningful information. Because this is the first time the Title Board has considered an abstract under the new law and the first time a challenge to an abstract has been before this Court, it presents an opportunity for this Court to ensure that voters receive a reasonable analysis of a measure's anticipated fiscal impact. Therefore, this Court should

consider the requirements for an abstract and provide guidance as to what the abstract should contain even if the Court determines that Proposed Initiative #4 contains multiple subjects. However, if the measure is not deemed invalid under the single-subject requirement, this Court should hold that the abstract must be returned to Legislative Council Staff and be rewritten to properly adhere to the requirements of section1-40-105.5(3).

STANDARD OF REVIEW

When reviewing a challenge to the Title Board's decision, this Court "employ[s] all legitimate presumptions in favor of the propriety of the Title Board's action." *Matter of Title, Ballot Title, and Submission Clause for 2013-2014 #89*, 328 P.3d 172, 176 (Colo. 2014). Although the right of initiative is to be liberally construed, "[i]t merits emphasis that the proponents of an initiative bear the ultimate responsibility for formulating a clear and understandable proposal for the voters to consider." *In re Title, Ballot Title, and Submission Clause for 2007-2008 #62*, 184 P.3d 52, 57 (Colo. 2008) (citation omitted).

In reviewing an aspect of a proposed measure, such as the measure's abstract, the Court assesses whether it "reflects the true sense of the proposed law," and whether the measure "contains an estimate and explanation of any fiscal impact which the proposed law may have upon the state or any of its political subdivisions, to the extent that such impact is reasonably determinable." *In re Increase of Taxes on Tobacco Products Initiative*, 756 P.2d 995, 998 (Colo. 1988) (discussing the Court's review of a measure's summary and fiscal impact under section 1-40-101(2) (1973)).

ARGUMENT

I. PROPOSED INITIATIVE #4 CONTAINS MULTIPLE SUBJECTS IN VIOLATION OF THE SINGLE-SUBJECT REQUIREMENT.

Article V, § 1(5.5), of the Colorado Constitution requires that "[n]o measure shall be proposed by petition containing more than one subject . . . ." "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." Colo. Const., art. V, § 1(5.5); *see also* § 1-40-

106.5 (statutory single-subject requirement). Under this requirement, there must be a "'necessary or proper' connection between the component parts of a proposed initiative." *See, e.g.*, *In re Title, Ballot Title and Submission Clause, for 2007-2008, #17,* 172 P.3d 871, 878 (Colo. 2007). An initiative violates the single-subject requirement when it has "at least two distinct and separate purposes which are not dependent upon or connected with each other." *In re Title, Ballot Title, Submission Clause, and Summary for 2005-2006 # 73,* 135 P.3d 736, 738 (Colo. 2006) (quoting *In re Petition Procedures*, 900 P.2d 104, 109 (Colo.1995)).

The single-subject requirement protects against proponents that may seek to secure an initiative's passage by joining together unrelated or conflicting purposes and pushing voters into an all-or-nothing decision. *See In re Initiative "Public Rights in Waters II,"* 898 P.2d 1076, 1079 (Colo. 1995). Only when an initiative "tends to effect or to carry out one general object or purpose, [is it] a single subject under the law." *Id.*

A. Proposed Initiative #4 contains multiple subjects.

Proposed Initiative #4 contains at least three separate and distinct subjects that are major features but lack a necessary or proper connection to each other.

The central feature of the Initiative, and the measure's only affirmative housing growth limitation, is a one percent housing growth limit on Front Range counties starting in 2019. Initiative § 17(2). This is the measure's main subject and the one most likely to garner voter attention because this is the Initiative's only provision that affirmatively creates a housing growth limitation. In contrast to the one percent growth limit, the rest of the Initiative contains disconnected subjects that include "passive" housing growth limitations — only if voters at the local level pass housing growth limitations through the initiative and referendum process will other growth limitations become a reality. Based on this reasoning, one member of the Title Board voted at both the second hearing and the rehearing that the measure violated the single-subject requirement. (Ex. 1, at 24:12–25:11).

In another separate subject, and one that is part of the aforementioned "passive" housing growth limitations, the Initiative would give counties authority over home-rule municipalities to enact housing growth limitations through the initiative and referendum process. Initiative § 17(1). Currently, voters at the county level do not expressly have the right of initiative. Proposed Initiative #4 is written so broadly that a county's initiative authority would not be limited to merely percentage growth limitations. Rather, any limitation could be proposed that has the *effect* of limiting housing growth, such as limitations on lot size, square footage, rooms, set-backs, etc.

This newfound authority is a fundamental change to the constitutional home-rule relationship. Currently, section 6 of article XX vests home-rule muncipalities with the "power to make, amend, add to or replace the charter of said city or town, which shall be its organic law and extend to all its local and municipal matters." "Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of said city or town

any law of the state in conflict therewith."[2] Colo. Const. art. XX, § 6. The Initiative would strip home-rule municipalities of this exclusive governance power. *See Matter of Title, Ballot Title and Submission Clause, and Summary for 1997–98 # 95*, 960 P.2d 1204, 1209 (Colo. 1998) (reasoning that home-rule municipalities have the "full right of self-government in both local and municipal matters" afforded them by article XX, section 6, and holding that depriving home-rule municipalities of their power is a second subject "unrelated to the

[2] In particular, home-rule municipalities possess control over "[a]ll matters pertaining to municipal elections in such city or town, and to electoral votes therein on measures submitted under the charter or ordinances thereof, including the calling or notice and the date of such election or vote, the registration of voters, nominations, nomination and election systems, judges and clerks of election, the form of ballots, balloting, challenging, canvassing, certifying the result, securing the purity of elections, guarding against abuses of the elective franchise, and tending to make such elections or electoral votes non-partisan in character." Colo. Const. art. XX, § 6.

qualifications of judicial officers"). Such a stark change constitutes a separate subject.[3]

A third separate subject is a significant change to the initiative process itself. For any future measure that "regulate[s] the growth of privately owned residential housing," the change would permit only one challenge to such an initiative on the petition and only one challenge to such an initiative for sufficiency of signatures. Initiative § 17(4). It would also severely reduce the right to appeal by permitting only an "expedited" judicial determination for challenges on the petition. Initiative § 17(4)(c). If passed, such limitations will create a race to the courthouse, and for the losers completely eliminate their right to challenge a measure.

---

[3] This Court considered a similar home-rule challenge in *In the Matter of the Title, Ballot Title and Submission Clause, and Summary for 2005-2006, #76(a)*, and found it to contain a single subject. However, that case has no precedential value here because the arguments on the home-rule implications in this challenge are different in nature, the additional single-subject arguments raised here were not before the Court in 2006, and the 2006 decision was affirmed without opinion.

B. The separate subjects lack a necessary and proper connection and are characterized under an impermissibly broad umbrella topic.

Although the Proponents will likely contend that the measure's separate subjects are all tangentially related as "limits on local housing growth," this is too broad of an umbrella topic to pass single-subject muster. *See In re Title, Ballot Title, & Submission Clause for 2007-2008, #17*, 172 P.3d 871, 873–74 (Colo. 2007) (citation omitted) ("[A]n initiative with multiple subjects may be improperly offered as a single subject by stating the subject in broad terms."). "[A] proponent's attempt to characterize his initiative under some overarching theme will not save an initiative containing separate and unconnected purposes." *In re Title, Ballot Title, and Submission Clause for Proposed Initiative 2001-2002 #43*, 46 P.3d 438, 442 (Colo. 2002) (citation omitted); *see also id.* at 441-42 (reasoning that "[t]he common characteristic that the paragraphs all involve 'water' is too general and too broad to constitute a single subject").

Rather, no necessary or proper connection exists between the Initiative's separate subjects, and the one "implementation" provision is

not necessarily tied to the others. *See In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # 258(A)*, 4 P.3d 1094, 1097 (Colo. 2000) (stating that "[i]mplementing provisions that are directly tied to the initiative's central focus are not separate subjects"). The changes to the initiative process are unnecessary and constitute dramatic additions that extend beyond the measure's central facet of a one percent housing growth limit on Front Range counties.

Likewise, the change to Colorado's home-rule structure that gives counties the power to limit housing growth through initiatives and referendums is not necessarily related to the one percent housing growth limit on Front Range municipalities. The only similarity is that, if counties outside the Front Range do end up limiting housing growth through the initiative and referendum process, then when viewed only in hindsight, both provisions have the effect of limiting housing growth. Similarly, the new limitations on challenges to an initiative's signatures and petition form do not relate to the new one percent growth limits; those limits will take effect regardless. Instead, the three separate subjects are major provisions, and each subject constitutes a dramatic

change for Colorado: (1) a one percent housing growth limit covering the Front Range; (2) a means for counties to exercise control over home-rule municipalities that fundamentally alters their traditional relationship; and (3) a fundamental change to the initiative process that will limit citizens' ability to challenge a broad range of measures. *See In re Initiative 2001-2002 #43*, 46 P.3d at 448 (holding that changes to both petitioning procedures and substantive rights addressing matters of local concern violate the single-subject requirement).

C. The "dangers" that underlie the single-subject doctrine are present.

Not only do the Initiative's separate subjects lack a necessary or proper connection, but they present the very dangers the single-subject rule is designed to prevent.

First, the Initiative "combin[es] subjects with no necessary or proper connection for the purpose of garnering support for the initiative from various factions—that may have different or even conflicting interests . . . ." *In Re Title, Ballot Title, Submission Clause for 2011-2012 #3*, 274 P.3d 562, 566 (Colo. 2012) (internal citations omitted).

This could lead to the Initiative's enactment where the individual separate subjects might fail. *See id.* Here, voters might support a limit on Front Range housing growth but oppose making such fundamental shift to the home-rule framework that has existed in current form for over 100 years. Likewise, some voters might be concerned only with Front Range growth, while others might be concerned only with growth in the rural parts of the state. Because Front Range housing issues differ considerably from the housing issues in more rural parts of state, this danger is acutely present. Thus, it is likely that Initiative #4 could be a measure "incapable of being enacted on [its] own merits" that nevertheless passes because it "join[s] multiple subjects ... [that] will secure the support of various factions that may have different or even conflicting interests." *In re Initiative 2001-2002 #43*, 46 P.3d at 442 (citation omitted).

Second, Initiative #4 also triggers the second danger of omnibus measures because voters will be surprised by, or fraudulently led to vote for, a "surreptitious provision 'coiled up in the folds' of a complex initiative." *In re Initiative 2001-2002 #43*, 46 P.3d at 442. Voters, who

will undoubtedly focus on the Front Range one percent housing growth limit given its affirmative and immediate effect, may never realize that measure fundamentally changes the relationship between counties and home-rule municipalities. It is even more likely that voters would be left unaware that the measure would change the initiative process to permit only one challenge on the petition to a wide array of future measures that could regulate the growth of residential housing and only one challenge to such initiatives for sufficiency of signatures. Therefore, the Initiative violates the single-subject rule by "enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits," § 1-40-106.5(1)(e), and by causing "voter surprise and fraud." *In re Initiative 2001-2002 #43*, 46 P.3d at 442.

In sum, Proposed Initiative #4's disparate subjects are major provisions that lack a necessary and proper connection and present the very dangers at voters' expense that the single-subject requirement was designed to prevent.

II. THE INITIATIVE'S ABSTRACT FAILS TO COMPLY WITH THE REQUIREMENTS IN C.R.S. § 1-40-105.5(3).

Even if this Court determines that Initiative #4 has multiple subjects, it should address whether the fiscal impact statement's abstract complied with the new statutory requirements in section 1-40-105.5(3). Because this is the first time the Title Board has considered an abstract under the new law and the first time a challenge to an abstract has been before this Court, this is an issue of first impression. Therefore, this Court's opinion will set the bar as to the minimum detail that must be included for an abstract to meet the statutory requirements, and will help guide the Title Board, the Office of Legislative Council, and the citizenry moving forward.

Moreover, the proper interpretation of the statutory requirements for an abstract is an issue of particular importance to the Petitioner. Petitioner Kopp is the current President and CEO of Colorado Concern, an alliance of top business executives. Colorado Concern helped draft House Bill 15-1057 and led the effort to obtain its passage in the legislature. 2015 Colo. Sess. Laws 674 (passing section 1-40-105.5(3)). As detailed below, section 1-40-105.5(3)'s plain language, its legislative

history, and Colorado Concern's purpose in running the bill demonstrate that the abstract prepared for Proposed Initiative #4 fell well short of the statutory requirements for an initial fiscal impact statement. The abstract provides only vague statements of the Initiative's fiscal impact and is clearly of no help to voters who will be trying to educate themselves on whether to sign any future petition. Unless this Court acts, fiscal impact statements for proposed measures will lose any meaningful significance.

A. The legislative intent was to provide voters with fiscal impact information earlier in the initiative process.

Fiscal impact statements and fiscal notes have long been a part of the legislative and initiative processes. For every bill, members of the General Assembly receive a fiscal note prepared by Colorado's Legislative Council Staff ("LCS") that contains a statement of the estimated fiscal impact of the bill or concurrent resolution. *See* § 2-2-322 (fiscal notes); H.R. Rule 32A; S. Rule 25.[4] The fiscal note includes

[4] House, Senate, and Joint Rules can be found at https://leg.colorado.gov/house-sente-rules.

an explanation of the measure's fiscal impact on state and local government revenue and spending, and is based on a set of assumptions that take into account information collected from state agencies, local governments, and other sources. *See* Joint Rule 22.

Similarly, LCS has prepared fiscal impact statements for all ballot measures, but only late in the initiative process once a measure is certified for the statewide ballot. These fiscal impact statements appear in the Blue Book, the official voter guide prepared by LCS for statewide ballot measures. *See* § 1-40-125.5.

House Bill 15-1057, which added section 1-40-105.5, requires a fiscal impact statement now appear earlier in the initiative process so that voters have the same information available during that process that legislators have for legislative bills. The law now requires that: (1) LCS create a fiscal impact statement for any measure that is filed with the Title Board, § 1-40-105.5(2)(a); (2) the statement provide an analysis of how a measure would affect government coffers and taxpayers' pocketbooks, § 1-40-105.5(3); and (3) the analysis be included in an abstract, along with a synopsis of the proposed measure, on the

first page of ballot petition packets, *id*. In particular, the fiscal impact statement's abstract must provide:

> (a) An estimate of the effect the measure will have on state and local government revenues, expenditures, taxes, and fiscal liabilities if the measure is enacted;
>
> (b) A statement of the measure's economic benefits for all Coloradans;
>
> (c) An estimate of the amount of any state and local government recurring expenditures or fiscal liabilities if the measure is enacted;
>
> (d) For any initiated measure that modifies the state tax laws, an estimate, if feasible, of the impact to the average taxpayer if the measure is enacted.

§ 1-40-105.5(3). Significantly, the fiscal impact statement must be "substantially similar in form and content to the fiscal notes provided by [LCS] for legislative matters pursuant to section 2-2-322, C.R.S." § 1-40-105.5(2)(c)(I).

B. The legislative record demonstrates that the General Assembly intended for a more robust abstract than what was provided here.

Not only is section 1-40-105.5's language clear about the contents of an initial fiscal impact statement's abstract, but the legislative history of House Bill 15-1057 confirms that the General Assembly

meant for voters to have a meaningful fiscal impact statement. Proposed Initiative #4's short and vague abstract fails to meet that standard.

At House Bill 15-1057's March 25, 2015 hearing in the House Committee on Veteran Affairs, Representatives Court and Delgrosso, the primary sponsors of the bill, unequivocally clarified what was to be included in an initial fiscal impact statement.[5] Representative Court explained that the bill's purpose was to put an initiative's fiscal impact, the information that goes in the Blue Book, out earlier before signatures were collected.[6] This was "a matter of transparency and public information."[7]

In addition, an amendment passed at the hearing allowed Representative Delgrosso to clarify that a robust abstract was to be included on the petition form itself. The amendment eliminated a requirement that a two-sentence summary of the abstract be included

---

[5] *Hearing on H.R. 1057 Before the H. Comm. on Veterans Affairs*, 1st Regular Sess., 70th Gen. Assembly (Colo. Mar. 25, 2015) (statements of Representatives Court and Delgrosso).
[6] *Id.* at 50:58–52:20.
[7] *Id.* at 51:44.

on every page of the petition.[8] Representative Delgrosso, in response to a question posed at that hearing as to whether the amendment would require the two-sentence summary or the full abstract on the petition's first page, explained that the first page of the petition would still include the full abstract to provide voters with more information on the measure's fiscal impacts.[9] The representative's response to another question, this time from a person testifying in opposition to the bill, confirmed that the abstract was meant to address both state and local economic impacts, just like fiscal notes.[10]

To help clarify what was to be expected in the initial fiscal impact statement, the sponsors handed out at the hearing two different examples of abstracts that went into the 2014 Blue Book, the abstracts for Amendment 68 and Proposition 105.[11] (Exhibit 2, 2014 Blue Book, at 7–13, 27–32). The sponsors then explained that a proposed measure's abstract is to "mirror" the Blue Book's estimate of fiscal impact, which is the state revenue impact and state spending impact sections within

[8] *Id.* at 57:19–58:15.
[9] *Id.* at 58:40–59:35.
[10] *Id.* at 1:36:53–1:37:33.
[11] *Id.* at 10:01:00–10:05:33.

the Blue Book for those examples.[12] Both examples, which pertain to complex measures similar in nature to Proposed Initiative #4, included robust fiscal impact statements, with estimates based on assumptions that included dollar amounts and information on what has occurred in the past. These examples show that while it may be difficult for LCS to give precise estimates for certain measures, LCS can provide ranges, maximums, minimums, and qualifications to their actual dollar estimates for even measures that are complex.

The Blue Book entry for Amendment 68, which proposed to permit horse racetrack casino gambling in Arapahoe, Mesa, and Pueblo counties, and would distribute the tax revenue to K-12 public schools, included estimates on state revenue of $81.9 million in budget year 2015-16 and up to $114.5 million in budget year 2016-17. (Ex. 2, at 7, 10). The entry also included per student revenue numbers based on state projections of student enrollment. (*Id.* at 10). Below these estimates, the Blue Book included a table of the estimated maximum tax revenue change under Amendment 68. (*Id.* at 11). Under the state

[12] *Id.* at 10:02:05–10:03:00

spending section, the Blue Book included two more tables, stated that "[t]he state's cost to regulate existing casino gambling was about $11 million in budget year 2013-14," and explained that state spending would be about $800,000 per year. (*Id.* at 11–13).

Similarly, the Blue Book entry for Proposition 105, which concerned labeling genetically modified food, included estimates with dollar figures. (*Id.* at 27, 31–32). As to state revenue, the Blue Book noted that "[p]assage of Proposition 105 may result in an increase in revenue from fines," but that "[i]n the past five years, one person has been found guilty of mislabeling a food, drug, device, or cosmetic product, so this proposition is not expected to create a significant increase in fine collections from violations." (*Id.* at 31). As to state spending, the Blue Book included actual numbers on spending and explained that "[s]taffing, rulemaking, and computer software updates are expected to cost about $113,000 in the first year of implementation. Once the rules are in place, staffing, computer software maintenance, and food sampling and testing are estimated to cost $130,000 annually." (*Id.* at 31–32).

At later hearings, the sponsors reiterated that the initial fiscal impact statement for an initiative was to mirror the Blue Book process, i.e., to simply put what is in the Blue Book in each proposed initiative's petition.[13] Voters could see the costs upfront, "like what we get here as legislators."[14] In other words, in the interest of transparency, the bill was simply intended to move the process up sooner, not change its substance or rigor. Moreover, during another hearing, an amendment was passed to increase the time allotted to LCS to create their estimate from two days to at least a week, underscoring that the legislators wanted LCS to take the time to create a meaningful and "complete" fiscal impact so voters could be better informed.[15] Such statements

---

[13] *Hearing on H.R. 1057 Before the H. Comm. on Legislative Council*, 1st Regular Sess., 70th Gen. Assembly (Colo. Apr. 24, 2015) (statements of Representatives Court and Delgrosso), at 1:27:30–1:28:10.
[14] *Id.* at 1:32:44.
[15] *Id.* at 1:31:10–1:33:34.

were later echoed by Senators during the bill's hearing at the Senate Committee on Veterans Affairs.[16]

The legislators' comments also matched Colorado Concern's. During the March 25, 2015 hearing, Tamra Ward, then President and CEO of Colorado Concern, explained that the bill had the support of 110 Colorado CEOs, who agreed that the electorate should have information available early in the process to understand a proposed initiative's fiscal impact.[17] She explained that this information would be "similar to what legislators receive."[18]

Therefore, the legislative history of House Bill 15-1057 makes clear that the abstract in a proposed measure is to mirror what is in the Blue Book and provide meaningful information for voters early in the initiative process.

---

[16] *See Hearing on H.R. 1057 Before the S. Comm. on Veterans Affairs*, 1st Regular Sess., 70th Gen. Assembly (Colo. May 5, 2015) (statements by Senators Sonnenberg and Hill that "this bill helps voters become informed," is "about openness and transparency," and will have the fiscal impact statement process be "very much like the fiscal process we have here"), at 2:35–3:40, 5:43–5:48.

[17] *Hearing on H.R. 1057 Before the H. Comm. on Veterans Affairs*, 1st Regular Sess., 70th Gen. Assembly (Colo. Mar. 25, 2015) (testimony of Tamra Ward), at 1:54:26–1:55:23.

[18] *Id.* at 1:55:24–1:56:08.

C. Other states with similar statutes require a more meaningful fiscal impact statement that was drafted here.

Colorado is not unique in requiring a fiscal impact statement for a proposed initiative. As Ms. Ward explained at the legislative hearing, more than half of the states that use a similar initiative system as Colorado's publish the fiscal impact statement on or with the proposed initiative's petition form.[19] Many of these states require a robust fiscal statement on the petition form, as HB 15-1057 requires.

For example, California, which also has the estimate be placed in the petition form, requires:

> The Attorney General, in preparing a circulating title and summary for a proposed initiative measure, shall, in boldface print, include in the circulating title and summary either the estimate of the amount of any increase or decrease in revenues or costs to the state or local government, or an opinion as to whether or not a substantial net change in state or local finances would result if the proposed initiative is adopted.

---

[19] *Id.* at 1:56:09–1:56:30; *see also Fiscal Impact Statement: Single Subject Rules by State*, Ballotpedia, https://ballotpedia.org/Fiscal_impact_statement#States (last visited Jan. 23, 2017) (noting that of the 23 states other than Colorado that have an initiative process, 15 of them require a fiscal impact statement).

Cal. Election Code § 9005. Under this process, California has managed to provide meaningful statements even where an accurate fiscal estimate is difficult. For example, in the fiscal impact estimate report for the Marijuana Control, Legalization & Revenue Act of 2014 (No. 13-0053), the estimate acknowledged that the major fiscal effects could vary considerably depending on a number of factors, but nevertheless stated that the fiscal effects included "[r]educed costs potentially exceeding $100 million annually to state and local governments" for enforcement, and "[p]otential net additional tax revenues of a few hundred million dollars annually related to the production and sale of marijuana."[20]

Likewise, fiscal impact statements in Washington also provide meaningful information. Washington's statute, which is similar to Colorado's, requires that "[a] fiscal impact statement must describe any projected increase or decrease in revenues, costs, expenditures, or indebtedness that the state or local governments will experience if the

[20] *MCLR 2014 Fiscal Impact Estimate Report* (13-0053), California MCLR 2016: The Marijuana Control, Legalization & Revenue Act, http://www.marijuanacontrollegalizationrevenueact.com/fiscal-impact-estimate-report/, (last visited Jan. 23, 2017).

ballot measure were approved by state voters." Wash. Rev. Code § 29.79.075. Under that mandate, the state was still able to provide a meaningful estimate that showed dollar amounts for state and local government expenditures for a very broad initiative that would make it a crime to sell, offer to sell, purchase, trade, barter for, or distribute any covered animal species part or product.[21]

Finally, it is worth noting that when challenged, drafted fiscal impact statement have been held deficient in other states for leading voters to believe that the proposed amendment will not have its intended effect and for including vague terms. *See Advisory Op. to Att'y Gen. re Referenda Required for Adoption & Amendment of Local Gov't Comprehensive Land Use Plans*, 14 So.3d 224, 227–28 (Fla. 2006).

---

[21] *Fiscal Impact Statement for Initiative 1401*, Office of Financial Management, http://www.ofm.wa.gov/ballot/2015/I-1401_Fiscal_Impact_Statement.pdf (explaining that the reason that it could not make a state revenue estimate for new fines was because there was no available data to estimate the number of convictions that may occur under the proposed measure).

D. Proposed Initiative #4's abstract falls well below the statutory standards.

House Bill 15-1057 did not go into effect until the current 2017-2018 initiative cycle. As such, Proposed Initiative #4 is the first time the public, the Title Board, and this Court can ascertain the results of the new fiscal impact statement process. Contrary to the statutory requirements, the Initiative lacks a robust abstract based on reasonably determinable information that would provide voters with beneficial information.

Despite what the legislature and Colorado Concern intended when House Bill 15-1057 was proposed and enacted, and the express requirements in section 1-40-105.5(3), Proposed Initiative #4's abstract is meaningless and perfunctory. At a mere six sentences, the abstract states in full:

> ***Local government revenue and spending.*** Beginning in FY 2018-19, the proposed initiative will reduce local government revenue from building permits, property tax revenue on new construction, and use taxes in districts with a binding housing growth limit. 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.
>
> ***Economic impacts.*** The value of existing housing units may increase in communities where there are binding growth limits, impacting homeowners and landlords. For Colorado residents that would like to move into communities with binding housing limits, this measure may make it more expensive to find homes to buy or rent. Limits on housing permits will also impact the distribution of construction employment, retail trade, and population within Colorado.

This abstract consists of nothing more than general statements of what might occur with housing growth limits. The abstract's vagueness is in direct violation of section 1-40-105.5(3)(a)'s requirement that the estimate include "the effect the measure will have on *state* and local government revenues, expenditures, taxes, and fiscal liabilities." (Emphasis added). Although the measure's abstract nebulously addresses local government revenues and spending, the abstract's analysis lacks specific numbers and does not explain what will occur beyond that something will be "reduced" or will "increase." The measure's abstract also utterly fails to make any mention of the measure's effect on state government revenues and spending.

Similarly, contrary to section 1-40-105.5(3)(b)'s requirement that abstract include "[a] statement of the measure's economic benefits for all Coloradans," the abstract fails to provide Colorado voters with meaningful information on the effect the measure will have on them. For example, the abstract's statement that "[l]imits on housing permits will also impact the distribution of construction employment, retail trade, and population within Colorado," does not state with any specificity what that impact will look like or to what degree. In other words, unlike the estimates in the Blue Book examples presented by the sponsors, the abstract's statements provide no meaningful information to voters to aid them in making an informed decision.

The abstract's minimal statements might have sufficed if the measure consisted of only the means through which local governments could enact housing growth limits. If that were the case, LCS's comments at the rehearing that the housing growth limitations were "indeterminate" and that there was "no way to get a precise estimate to put down," (Ex. 1, at 65:14-15, 66:6-7), would have been more understandable because any limit and its economic impact would have

been speculative given that it requires voters in one or more counties to enact some form of indeterminate limit. *See In re Election Reform Amendment*, 852 P.2d 28, 37 (Colo. 1993) (noting that although the Court had held numerous times that the Title Board is not required under former § 1-40-101(2) (1973)[22] to include a definitive estimate when it cannot be determined, when "the Board has sufficient information to assess the fiscal impact" of some provisions "it should state with specificity which provisions will have fiscal impacts which are capable of being estimated, and which are truly indeterminate").

But here, the Initiative contains a specific housing growth limit that is not "indeterminate"—a one percent cap on Front Range counties and city and counties that is permanent unless amended by voters in

---

[22] Section 1-40-101(2) (1973) provided:

> . . . (I)f, in the opinion of the board, the proposed law or constitutional amendment will have a fiscal impact on the state or any of its political subdivisions, (the board) shall request assistance in such matter from the division of budgeting or the department of local affairs. . . . (T)he division of budgeting, and the department of local affairs, shall furnish any assistance so requested, and the summary shall include an estimate of any such fiscal impact, together with an explanation thereof.

the future. Based on this certainty, the abstract should have contained actual numbers on reduced local government revenue, increased property values, impact on local housing markets, reduced local government spending, and the distribution of population, construction employment, and retail trade locally and statewide. Moreover, the abstract should have included the obvious unavoidable impacts from the one percent housing growth limitation, such as job loss.

Even though all of these figures were reasonably determinable, LCS either abdicated its responsibility or misunderstood the measure. At the rehearing, LCS offered this explanation for why it could not determine a precise estimate:

> But you know, I think the challenge for us was trying to determine in these Front Range counties which ones are going to -- is this one percent growth limitation going to be binding or not? And that can have different impacts on both property values and construction, employment and so on.
>
> So I think our feeling was there is no way to get a precise estimate to put down.

(Ex. 1, at 65:25–66:7). This explanation makes sense only if LCS does not know what those counties will do after two years. Nevertheless, LCS should still have provided a precise estimate because it could have

calculated the fiscal impacts for the first two years of the binding and unalterable one percent growth limits, and could have provided the fiscal impacts for an even longer period with the caveat that the voters could eventually amend or repeal the limit as is true with any ballot measure. This is no different than what LCS has regularly done for the Blue Book on other initiatives. For example, if an initiative calls for a tax increase, voters can always reverse the tax increase with a new initiative at any time. The fact that the one percent housing growth limit may be amended or repealed in the future should not be an excuse to simply decline to do even a minimal analysis.

Furthermore, not only were the abstract's statements lacking specificity, but the abstract did not make use of tailored assumptions or explain the different fiscal impacts for each of the measure's provisions. For example, the abstract could have included dollar estimates on the fiscal impact of one percent housing growth limitations in each of the Front Range counties based on projections with 2, 5, or 10 year periods, which would have provided voters with more valuable data. Similar techniques could have been used as housing growth limitations outside

of the Front Range. *See In re Election Reform Amendment*, 852 P.2d at 37 (stating that when assessing the adequacy of a fiscal impact statement under the former section 1-40-101(2) (1973), "[e]ach distinct provision of the proposed [measure] must be addressed individually" where certain provisions are capable of being estimated). Instead, LCS focused the abstract on vague local government impacts that did not mention which local governments were being addressed.

Finally, the Initiative's abstract does not mention growth statistics already available. Often Blue Book estimates, such as the estimates in both examples presented by HB 15-1057's sponsors, include what has occurred in the past, so that voters can understand what the measure's impact will have in the future. At minimum, it would have been helpful for voters to know what housing growth has been in Colorado counties over the past years, a fact the Title Board conceded. (Ex. 1, at 72:13-18).

Overall, the abstract fails to meet the statutory requirements because it does not provide estimates with dollar amount that were capable of being provided, does not differentiate the fiscal impacts

between the various provisions of the measure, lacks specificity based on tailored assumptions, does not cover state revenue and spending, and in general does not provide a meaningful and capable assessment of the fiscal impacts that would be of benefit to voters. Therefore, regardless of how this Court decides the single-subject issue, this Court should provide specific guidance to LCS and the Title Board as to what detail needs to be included in the abstract so that future abstracts do not suffer the same flaws. Furthermore, if this Court determines that the measure contains a single subject, then the abstract should be returned to LCS and be rewritten to properly adhere to the requirements of section 1-40-105.5(3).

CONCLUSION

Petitioner Kopp asks this Court to reverse the Title Board's denial of the substantive parts of Petitioner's Motion for Rehearing and hold that: (1) the measure violates the single-subject requirement, and thus the measure should return to the Proponents because the Title Board lacked the power to set title; and (2) the measure's abstract does not comply with section 1-40-105.5. If the measure contains a single

subject, Petitioner Kopp asks this Court return the abstract to LCS for revisions because it does not adhere to the statutory requirements. Even if this Court determines that the measure violates the single-subject requirement, however, Petitioner Kopp asks that this Court determine that the measure's abstract did not meet the statutory requirements and provide guidance to LCS and the Title Board on what must be included in an abstract so that future abstracts are not so lacking.

Respectfully submitted this 31st day of January, 2017.

BROWNSTEIN HYATT FARBER SCHRECK LLP

/s/ Jason R. Dunn
Jason R. Dunn
David B. Meschke
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2017, I electronically filed a true and correct copy of the foregoing PETITIONER'S OPENING BRIEF via the Colorado Courts E-Filing system and was served via electronic mail to the following:

LeeAnn Morrill, Esq. (LeeAnn.Morrill@coag.gov)*
Matthew D. Grove, Esq. (Matt.Grove@coag.gov)
Office of the Colorado Attorney General
Ralph L. Carr Judicial Building
1300 Broadway, 10th Floor
Denver, CO 80203
* Counsel of Record
Attorney for the Title Board

Mark Grueskin (mark@rklawpc.com)
1600 Stout Street, Suite 1400
Denver, CO 80202
Attorney for Objector Scott E. Smith

Dan Hayes (futuredenver@gmail.com)
5115 Easley Rd
Golden, CO 80403
Respondent

Julianne Page (julipage13@gmail.com)
3565 Kline Street
Wheat Ridge, CO 80033
Respondent

/s/ Paulette M. Chesson
Paulette M. Chesson, Paralegal

TITLE SETTING BOARD HEARING

PROPOSED INITIATIVE MEASURE 2017-2018 No. 4

January 4, 2017 - 2:00 p.m.

The following proceedings were transcribed from a recording provided by the Secretary of State's Office, by Deborah D. Mead, Notary and Certified Shorthand Reporter for the State of Colorado.

TITLE BOARD:

Suzanne Staiert, Deputy Secretary of State

Sharon Eubanks, Designee of Director of Office of Legislative Legal Services

Glenn Roper, Assistant Solicitor General

Mark Grueskin, For Petitioner, Scott Smith

Jason Dunn, For Petitioner Michael Kopp

Daniel Hayes and Julianne Page, Proponents

Todd Harry, Colorado Legislative Council

Larson Silbaugh, Fiscal Analyst

PROCEEDINGS

CHAIRMAN STAIERT: All right. Good afternoon. This is a meeting of the Title Setting Board pursuant to Article 40 of Title 1 C.R.S. The time is 2:00 and the date is January 4, 2017. We are meeting in the Secretary of State's Aspen Room at 1700 Broadway, Denver, Colorado. The Title Setting Board today consists of myself, Suzanne Staiert, Deputy Secretary of State, on behalf of Secretary of State Wayne Williams; and Sharon Eubanks, Designee of Director of Office of Legislative Legal Services, Dan Cartin; and Glenn Roper, Assistant Solicitor General, Designee of Attorney General Cynthia Coffman.

Today we are meeting to consider a rehearing on one title setting. And the way the rehearing is generally conducted is the board will hear from the Proponents and ensure that they're here, and then we will have questions for the two Petitioners that have filed for a motion for rehearing.

Let's go ahead first and have the Proponents come up and just introduce yourselves and let us know that you're here.

MR. HAYES: Daniel Hayes, Golden, Colorado.

MS. PAGE: Julianne Page, Wheat Ridge, Colorado.

CHAIRMAN STAIERT: Okay. And have you both had a chance to review the motions for rehearing that have been

submitted?

MR. HAYES: Yes, we have.

CHAIRMAN STAIERT: Okay. Do you have any comment on those? I will ask you again after the Petitioners come up. Do you have any comment on ...

MR. HAYES: Do you want comments now on that?

CHAIRMAN STAIERT: If you have any comments you want to make now, just based on the written motions, that would be fine, we can take those now.

MR. HAYES: Well, he was referring to how county residents should have rights over home rule counties and --

CHAIRMAN STAIERT: Which he?

MR. HAYES: -- home rule cities. Is that something I should discuss now?

CHAIRMAN STAIERT: You can, sure. As to the single subject or --

MR. HAYES: Yes.

CHAIRMAN STAIERT: Okay. And which motion are you referring to? Mr. Grueskin's or Mr. Dunn's?

(Unidentified voice in the distant background.)

CHAIRMAN STAIERT: You're going to look it over. Okay. I'll go ahead and take comments from them, and then we'll hear from you.

Mr. Dunn, do you want to go first?

EXHIBIT 1

MR. DUNN: Thank you, and good afternoon. Hopefully, we can get everybody out of here with the snow. And the Proponents wore much better shoe wear than the rest of us for a day like today.

So I thought -- Mr. Grueskin and I have had a chance to talk, and hopefully can make this efficient as possible without being too duplicative. So I thought what I would do is address the single subject issue and then let Mr. Grueskin do the same, if that works --

CHAIRMAN STAIERT: That would be fine.

MR. DUNN: -- for you all. And then I'm not sure if you want to go to title if necessary after that or abstract or how you want to do it.

CHAIRMAN STAIERT: Let's do single subject first, and then if -- then we'll see how that goes.

MR. DUNN: All right. So for the record, Jason Dunn on behalf of Objector, Michael Kopp.

As you read in our motion, we believe that the measure has at least four separate subjects that bear no necessary connection to each other.

And I think foremost, the primary purpose of the measure is the one percent growth limitation on the Front Range counties. That's an affirmative limitation on growth as opposed to Section 1 of the measure that creates a new constitutional right to place housing growth

limitations which, while a new provision in law, I guess is what I would call passive in that it would require voters in a particular area to take advantage of that right to institute some sort of growth limitation.

So, and this is also sort of a prelude to our title argument, that the one percent limitation is the primary purpose of the measure and that the other provisions are disconnected subjects.

So as I said, in addition to that, Section 1 of the measure creates a new constitutional right of initiative and referendum in local voters to limit or ban housing growth. Obviously, it's very different than the one percent limitation on the Front Range counties, both from a geographic perspective, obviously, but from a legal perspective as well. The constitutional right of initiative or referendum on a statewide basis is essentially a new right given to voters versus the one percent limitation, which is a change in policy for the state.

And obviously, voters who may support a one percent limit on Front Range counties, where most of the population and growth has been in Colorado, may not wish to see growth limitations in rural counties in Colorado, and may be torn between supporting one versus the other.

A third subject I think is the fundamental change

to Colorado's home rule structure, and I think it's important to read real quickly from Article XX of the Constitution. This is Section 6. And it says, "The people of each city or town of this state having a population of 2,000 inhabitants are hereby vested with and they shall always have power to make, amend, add to, or replace the charter of said city or town, which shall be its organic law and extend to all its local and municipal matters. Such charter and new ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of said city or town any law of the state in conflict therewith."

And I think that's important to read, because that shows the fundamental nature of the home rule right in cities and counties, which are fundamentally altered by the second section -- second sentence in Section 1 of the measure. It fundamentally changes the relationship between local governments and counties or municipalities and counties that's really been in place, I don't know if it goes back to the founding of the state, but certainly back a century or more in Colorado in that relationship.

I also think it's important to note that this is not just about a narrow interpretation of housing growth limitation. So because the one percent number is in the measure, at least I initially tended to think of the right

of initiative and limitations on growth in terms of a numerical limitation that voters could say a one percent limitation or a two percent limitation. But after thinking about it, I realized it's a much broader limitation and a much broader grant of authority to voters to impose these limitations in the home rule context.

So for example, voters in a county could put a measure on the ballot to impose limitations on municipalities within the county, home rule municipalities within the county, saying well, you can grow, but 20 percent of your new housing stock has to be affordable housing to relate back to an earlier version of this measure. Or they could say you have to have certain setbacks, or they could say you have to -- housing has to be limited to 2,500 square feet, because we don't want megamansions or McMansions in our county.

So it really gives counties the authority to rewrite the development code of home rule municipalities within the county. And that clearly is a different and unnecessary provision, different in terms of the one percent limit and the constitutional right of initiative or referendum.

And lastly, I think, at least of our four subjects, is the change to the initiative process itself. Standing alone, the measure could grant the right

of initiative and referendum to the voters, putting aside the single subject issues, and not have any provision regarding the initiative process, because that's already covered in statute in Colorado.

So this provision is not only a change to that process, but it's an unnecessary addition. And to steal a citation from Mr. Grueskin, if you look at 2001-2002 No. 43 and 45, that talks about -- it's a supreme court case, where they looked at changes to the initiative petition process, and they said that that procedural -- that procedural change was a separate and distinct subject from substantive right -- substantive changes to the rights regarding what type of measures can be amended through the initiative process. And they ruled that they were not complying with the single subject requirement.

So, and if you look specifically at the procedural requirement, it limits -- at least I believe as I interpret it, it limits challenges to the petition form and the signatures to a single challenge. And that's, obviously, very unusual. In Colorado anybody can challenge an initiative or a referendum through whatever process is in place. This measure limits it to a single challenger. So it's a race to the courthouse, so to speak. If you're not the first person, then you have no right to challenge an initiative or petition related to

housing growth under this measure.

In addition, it appears that the measure eliminates any right of appeal under either of those decisions. So in Section -- let's see here -- 4(c), relating to challenges to the form and content, the last provision says, An expedited judicial decision for such a challenge shall be final. Now, if that's a challenge to the clerk, then it eliminates any right of appeal. And in Section (d) right below that, the last section says, Recertification shall not exceed two weeks and shall be final. So again, eliminates any right of appeal.

So these are substantial changes to the initiative process, and they're substantive in nature and not, again, connected to any other of the subjects outlined in the measure.

So I'll pause there. Those are what we see as the four distinct subjects in the measure. I will answer any questions, or I can turn it over to Mr. Grueskin to talk about single subject.

CHAIRMAN STAIERT: Does anyone have any questions?

MR. ROPER: Mr. Dunn, other than the language you quoted from Section 6 of Article XX, are there any other specific provisions of Article XX that you think are implicated by this measure?

MR. DUNN: Is that a hint?

MR. ROPER: No.

MR. DUNN: No. I think, I mean generally Article XX outlines the right of home rule governance for cities and towns over 2,000 inhabitants.

MR. ROPER: I'm just trying to figure out if you have a specific concern or it's just that some of the residual power of the home rule municipality would be taken away.

MR. DUNN: I would say it's more than the residual. I would say it -- the fun- -- you know, the home rule relationship itself is constitutional. It's a creature of our state constitution, and it grants rights to municipalities to assume, you know, all the powers of the state that -- I don't want to get into all the case law, but, you know, all the powers of the state that are otherwise conflicted. And it fundamentally alters that relationship that has been unaltered for all of these years.

And as I said, it's not just the ability to put a one or two percent growth limitation on. It really is the ability to dictate to a home rule municipality by another local government, by a county, a creature of state law, how their development should occur.

MR. ROPER: Thank you.

CHAIRMAN STAIERT: Do you have any questions?

MS. EUBANKS: Sure. Mr. Dunn, are you aware that the Proponent, Mr. Hayes, submitted a proposal back in the 2005-2006 cycle that was very similar to this measure, at least in terms of the provisions in Subsection (1) and (2) in terms of the limits that was -- the Title Board set a title, there was a motion for rehearing, it went up to the supreme court, and the supreme court upheld the title set by the Title Board?

MR. DUNN: Right. I'm familiar with it.

MS. EUBANKS: And in terms of would you be familiar enough to distinguish --

MR. DUNN: Right.

MS. EUBANKS: -- between that and this one as to why --

MR. DUNN: Right. I haven't compared the two recently. I did when the measure was -- the original version of the measure was first filed.

But as I recall, the latter provisions, and I could be wrong about this, but I think the latter provisions with regard to the initiative process --

MS. EUBANKS: It's not --

MR. DUNN: -- is not included.

MS. EUBANKS: -- in -- right. But in terms of the arguments you make regarding the general process

established in Subsection (1) --
MR. DUNN: Right.
MS. EUBANKS: -- for other local governments to impose growth limits versus the specific one that's set forth in Subsection (2), those provisions are fairly similar. And so in terms of the arguments you made based on those provisions, I was wondering --
MR. DUNN: Right. And I don't recall if the original measure included the second sentence of Section (1) regarding the county's right to impose, you know, sort of the home rule provision, as I refer to it. I don't think that did, but I could be wrong about that.
MS. EUBANKS: And it did allow --
MR. DUNN: Home rule.
MS. EUBANKS: Yeah, per county to impose a countywide --
MR. DUNN: So I'd have to go back and compare the two.
MS. EUBANKS: Okay. That's fine. And I'll ask Mr. Grueskin the same question.
MR. DUNN: Okay. Is there nothing else? Thanks.
CHAIRMAN STAIERT: All right.
MR. GRUESKIN: Madam Chair, members of the Title Board, my name is Mark Grueskin. I'm appearing on behalf of the Objector, Mr. Smith. And I'd be happy to review

the single subject challenges that we made in our motion for rehearing. I'd likewise be happy to answer the questions that I believe are forthcoming.
Let me first, though, say that the suggestion -- the question that was asked was is there any specific provision in Article XX that is implicated by this measure. And I'd suggest to you there are two.
Number one, Subsection (d) gives municipalities, home rule municipalities, total control over their election process. That control is, by this measure, remote as to this class of measures. And in fact, it becomes -- those elections can't have any effect in light of the preeminence of a countywide decision. Therefore, there is that specific provision.
In addition, the decision in Initiative 2001-2002 No. 43 identifies land use and zoning as protected decisions for home rule municipalities under Article XX. And therefore, without a specific provision, nonetheless, it is clear that Article XX reserves that set of decision making for home rule municipality. It is yanked away from home rule municipalities by this measure.
So let me talk a little bit about the various subjects. Mr. Dunn is correct that there are a set of procedures that relate to a certain category of initiatives that are dictated here. And they are fairly

exhaustive in Subsection (4), but that is not the only set of issues, subjects that are addressed here.
Number 1, there is no county right of initiative. It doesn't exist, as the board knows well. That is created here for purposes of addressing growth, specific growth issues. That is a change in the fundamental nature of the county as a political subdivision of the state, which has only that authority that is granted to it by the state, and therefore, that is its own subject. We are giving law making authority to countywide electorates in order to bind all of the municipalities, notwithstanding their home rule or statutory nature.
That is a fundamental shift in what and how government operates at the county level. And the Colorado appellate courts have rejected the notion that, except as created by the general assembly, there is such a thing as a county initiative. And therefore, to the extent that it is now part of the organic law of the Constitution, that is its own subject.
Secondly, to the extent that there is a transfer of authority from municipal electorates to county electorates, that is a fundamental change. And as suggested earlier, that implicates Article XX, but it isn't solely the issue. The question is whether or not the right of an initiative as protected by Article V,

Section 1, Paragraph 9, which is all encompassing, having had that now removed, that all-encompassing power is taken away from municipal voters, whether or not that is, in fact, a second subject. And I could argue to you that, in fact, it is.
As I indicated, and as is implied by the No. 43 decision, the whole notion of growth, which is a function of land use and zoning decisions, has always been reserved for municipal voters. It's their community.
Take Arapahoe County, for example. Now, the citizens of Aurora have a say in the type of growth that's going to occur in Littleton. And you can go on and on in terms of the various counties that are going -- where countywide voters are going to change the decision making, the growth patterns, the economics of municipalities that have literally no geographic nexus to them other than the fact that they're within the same county.
As a function of that, the fact that residential housing growth is being shifted because either it is being decided at a county level or it's subject to the new statewide limit as set in this measure, suggests that there has been a change in the power and the authority of local electorates.
As we point out in our motion, in addition to that, there's a statewide process for these initiatives

and referenda with a specific growth limit on residential housing in the ten named counties.

As Mr. Dunn explained, and I won't repeat his point, but we make it too, the fact that you've got those two very different things at issue here are important. And not only are they important, they are distinct. They are distinct because it is one thing to say that there's a statewide limit; there is quite another thing to say that we're going to create a different standard.

And what is particularly important here is that there will be a misleading of voters in that this measure is about creating a right of initiative and referenda so that countywide voters can determine growth, except that for two years the ten named counties don't get to exert that power.

And therefore, you have a statewide authority, you have an exemption as to the ten named counties, and it is confusing, and it is misleading to say that, in fact, this is about initiatives and referenda that will control growth, because, in fact, that's not what this measure even permits. There is no local determination in those first two years. It is a statewide decision.

As I pointed out, there are procedures and standards for a certain class of initiative. Mr. Dunn addressed, and we would reiterate, as suggested earlier,

that this is changing home rule control over certain municipal elections. Again, you've got a set of essentially municipal decisions relating to growth and land use and zoning, and you also have a certain level of decision making relating to elections that's been reserved to those home rule communities that is now removed.

You've got the two-year mandatory growth limit, which is, as Mr. Dunn pointed out, separate from because it relates only to those ten counties. You have the actual ban on the right of initiative dealing with growth in those ten counties for a period of time as well as the applicability, the general applicability of other state laws.

Not to preempt, but to answer Ms. Eubank's question, yes there is another decision. It is not parallel to this one because it does not deal with the specific provisions, even as to paragraphs 1 and 2. Most notably, I would suggest to you that the issue raised by the last sentence in Subparagraph (2), which limits the right of initiative or referendum for the two-year period, wasn't raised as part of the single subject challenge, and it is very much part of our single subject challenge because there is and there isn't the right of initiative as to these ten counties, for at least those two years, as opposed to the rest of the state.

That was not my best sentence ever. What I meant to say was there is the -- there are these processes for balance in the state, but for that two-year period, it doesn't apply to the ten named counties.

And so we would suggest to you that the earlier decision, to the extent that it addresses precisely the same language and precisely the same legal concerns, may be found to be effective, the stare decisis, but we don't believe that that decision does, in fact, bind the board as to all arguments raised.

And with that, if you have any other questions, I'd be happy to answer them.

MS. EUBANKS: Just to follow up, in terms of the arguments that you did present in the former matter, you did make an argument regarding the restriction of the constitutional power of elected local officials, including home rule officials, and the court, obviously, did not buy that argument.

And so I mean it has a tie-in to there was a home rule concern, as well as for all elected officials, and yet the supreme court did not agree with you on that basis; is that correct?

MR. GRUESKIN: Actually, I was counsel of record only after the decision had basically been arrived at. So I wasn't involved in that case except to take over for

counsel who, unfortunately, passed away during the pendency of the case. So I can't argue about the briefing or the actual Title Board process because I wasn't involved.

MS. EUBANKS STAIERT: Thank you very much.

MR. GRUESKIN: Sure. Thank you.

CHAIRMAN STAIERT: Do you want to respond?

MR. DUNN: Yes. (Inaudible voice in the distant background) ... opposing attorney to everything I've done the last 20 years.

First of all, the countywide measure. I've lived in Jefferson County virtually all my life. The only way to approach growth is countywide. And in Arvada they passed a 10 percent -- you have to get 10 percent of the signatures of all their registered voters, which is about 12-, 13,000. It's almost impossible. I don't think they've had a single initiative since they passed that. They're made up of -- I know most of their city council are lawyers that have worked for various home builders. They do what they please. Virtually all that growth in the Rocky Flats area, there's about 10,000 houses coming out of the ground Arvada's got going, it's costing these county residents --

CHAIRMAN STAIERT: Right. Well, I mean the merits of your proposal are not --

MR. DUNN: The idea of the county imposing power over home rule cities, most the voters are from Lakewood, Arvada, Wheat Ridge, they're all home rule cities. So the voters of the county, majority of them, are from home rule cities. They have a right to protect the school costs that their --

CHAIRMAN STAIERT: Right. But the merits of your proposal, again, are not really up for debate. I mean if they were, we could debate whether allowing only one challenge to a form is even constitutional. But that's not something that the board considers. We don't consider whether your proposal is constitutional. We don't consider whether it's a good idea or a bad idea.

I mean at this point, we're only considering whether that inclusion of home rule creates a separate subject, whether the inclusion of these initiative and referendum sections create a second subject. I mean why you put them all together, that's really for you and that's something to sell the voters. But that's not something the board considers.

MR. DUNN: When I was working on the (inaudible), Mark Grueskin had challenges in Lakewood, for example. There's endless number of repeals that they can make at this time. That's why something needed to be done. You can't put something on the ballot of local government

without expecting appeals that can go on for years. There's no protection. There used to be. But this legis-- the general assembly relieved the frivolous clause from these local. So you can be appealed for -- there's no limit to it. So that's why that had to be addressed.

Also they keep referring to all these zoning matters that could be done. There's nothing in this proposal that talks about zoning. It just says proposals to regulate growth are -- you know, that's what the initiative and referendum is about.

CHAIRMAN STAIERT: Okay.

MR. DUNN: As far as the challenges of the petition, again, these could go on forever. I've never seen anything where there was more than one challenge to the form of petition. That has to be taken before a judge. He decides whether the challenge is good or not and makes a decision. I don't see any reason why there should have to be another judge look at it.

Same way with the sufficiency. They -- one challenge for the sufficiency. I don't know that the state allows several challenges. Once one's been made and the Secretary of State decides it's efficient -- sufficient, then it goes ahead to the voters. So why --

CHAIRMAN STAIERT: Yeah, my legal budget would disagree with that.

MR. DUNN: All right.

CHAIRMAN STAIERT: Point taken.

Any questions?

Well, I mean I guess, as I alluded to, I think there may be some fundamental questions about whether you can do an initiative process this way and whether that is going to be constitutional. But again, I don't think that's an issue for the board.

And the fact is that the last time the supreme court affirmed this title, there was language about growth limitations, home rule, and initiative and referendum. Now, it didn't get down to the details of what the initiative and referendum were going to look like, but it certainly referred to the initiative and referendum.

And so I think I'm still at the same place that I was at the last meeting, which is that this still contains a single subject. You know, again, I'm not sure how artfully it does it, but I don't think that specifying some of the things in the initiative and referendum create a second subject when the whole initiative and referendum idea was laid out last time.

MS. EUBANKS: And I'm of the same mind-set. Yes, there are these different components of the measure in terms of establishing a process for all the other counties not specifically set out in Subsection (2). It imposes a

limit on those specific governments in Subsection (2) for two years, and then they tie into the same process.

Yes, it establishes a right of initiative at the county level. It has procedural provisions regarding the challenges. It has home rule implications. But all of these are necessarily and properly connected to the imposition of a growth limit.

And so I see that as being a single subject, and I would, when we get to that point, would move to deny the motions for rehearings on single subject grounds.

CHAIRMAN STAIERT: Do you have any comments?

MR. ROPER: I don't have any -- just briefly, I would -- I would grant the motion for rehearing. I think it does have two subjects with respect to the specific cities and counties that are highlighted.

Now, unfortunately, I'm not familiar with the 2005-2006 case that Sharon brought up. So potentially if I were to read that, I would change my view. But since there would be a majority anyway --

CHAIRMAN STAIERT: We just affirmed -- I mean it wasn't a written --

MS. EUBANKS: But I do agree with Mr. Grueskin's description, that the arguments raised in that matter regarding single subject were different arguments necessarily than raised in the motions for rehearing

before us today.
MR. ROPER: Well, I would grant the motion for rehearing. I'm not too worried about not being familiar with that case, given that there's a majority on the other side.
So, and I agree with Suzanne, there could be some due process concerns with respect to the challenges to the petition's sufficiency, but I don't think that independently creates a second subject.
Again, my concern is with the -- the difference between Subsections (1) and (2). So I would grant it.
CHAIRMAN STAIERT: Okay. Do you want to go ahead and do the motion then?
MS. EUBANKS: Sure.
CHAIRMAN STAIERT: For that part, and then we'll move onto the next.
MS. EUBANKS: Right.
In regard to the motions for rehearing on No. 4, in regard to the single subject, I would move that we deny the motions for rehearing on those grounds.
CHAIRMAN STAIERT: Second.
All those in favor, aye.
CHAIRMAN STAIERT: Aye.
MS. EUBANKS: Aye.
CHAIRMAN STAIERT: Opposed?

MR. ROPER: Nay.
CHAIRMAN STAIERT: So that takes us to the title. And Mr. Dunn, did you have an order or -- is Mr. Grueskin doing that one? Mr. Grueskin, do you want to ...
MR. GRUESKIN: Thank you, Madam Chair. I apologize, I didn't realize that Mr. Dunn was pointing at me.
CHAIRMAN STAIERT: It was more of a shrug.
MR. GRUESKIN: I think that the point that we would make as to -- and can we limit this conversation just to the accuracy of title? I know that --
CHAIRMAN STAIERT: Sure.
MR. GRUESKIN: -- you've got staff here to address the fiscal impact statement.
The measure itself says that the county may uniformly restrict growth within the county, but that, obviously, is permissive rather than mandatory. And it would seem to me that if it is permissive, then to the extent that the county may uniformly restrict growth, it may also non-uniformly restrict growth, and that the title should indicate that there is no requirement that the limitations on growth be countywide or be applicable by jurisdiction or anything else. It could be subject to the -- either the political whim or some sort of specific growth plan or any other element.

And therefore, it seems to me that the fact that this is wildly open-ended in terms of how the county is going to apply growth limits, ought to be reflected in the title. I would think that that would be relevant for voters.
I would think that the title as it exists doesn't suggest that. It simply says the county voters are permitted to uniformly restrict growth.
CHAIRMAN STAIERT: You don't think that's covered in the next sentence when it says including all or parts of local governments?
MR. GRUESKIN: Honestly, I know that the board struggled as to how to include that phrase in that sentence. I don't really know what that means because it is qualified or it seems to qualify uniformly within the county.
And I thought actually that what that phrase referred to were local governments that spanned into another county. And so if that's not what it means, then I'd say no, it doesn't indicate that, because that was not what I took from that phrase, either based upon reading the initiative or upon hearing the Proponent speak at the first Title Board meeting. So no, I don't believe that that gets you there.
MS. EUBANKS: Does the word permitting -- I mean

in terms of that it's permitting county voters, it's not requiring, it's permitting, which seems permissive.
MR. GRUESKIN: Yes, but that seems to qualify whether or not they use the right of initiative or referendum, rather than whether or not the use of the referendum is uniform or non-uniform within the county.
CHAIRMAN STAIERT: What if it was uniformly within the county or parts of local -- well --
MS. EUBANKS: In terms of that statement in Subsection (1), I mean right now, as I understand it, counties fall within the general purview of the first sentence of Subsection (1), where it talks about the electors of any of these local governments reserve the right to limit housing growth within their boundaries. And then I would argue that the second sentence, because usually a county would only be voting on things within unincorporated portions of the county. The second sentence allows them to impose it countywide, throughout all the local governments, including municipalities. And that the distinction between the first sentence and the second sentence, and that -- I don't view the second sentence establishing the right for the county to do within unincorporated -- I mean it's taking the authority granted in the first sentence a step further.
And that's -- and I thought that's what we were

trying to reflect in the title, that in addition to what a county can do to themselves, which would be the unincorporated portions, they have the authority, if they choose to exercise that authority, to go further.

I mean all of (1) is optional. I mean it's discretionary. It's permissive. They have the authority to do it, but only if they choose to utilize the process that is established.

Am I not -- are you seeing it differently than I?

MR. GRUESKIN: I read that to allow the county to exercise the right of initiative in a uniform manner, but also to exercise it in a non-uniform manner; and therefore, the county can impose growth limits as to any jurisdiction contained within the county in whatever fashion the county chooses.

And I think that that is the necessary reading. To the extent that -- I agree with you about sentence No. 1, that grants all electors within all political subdivisions the right to do this. But where the county chooses to do it, the county can do it uniformly, if it -- if the intent was to allow the county only to apply a uniform growth limit throughout its jurisdiction, that's what that sentence would say. But it doesn't say that. A county can pick and choose where to apply a growth limit under the second sentence that you quoted. And the title

doesn't communicate that.

MR. ROPER: You're reading the second sentence as saying, for example, the county could pick a particular city within that county and impose a growth limitation only on that city?

MR. GRUESKIN: Or --

MR. ROPER: I'm not sure I read it that way.

MR. GRUESKIN: Electors throughout a county may elect to limit housing growth, may elect to limit housing growth uniformly in all governments. But if they may elect to do so, then they may also elect not to do so in terms of the uniformity of that particular growth limit.

MR. ROPER: I'm not sure I read it that way. I don't know that that power is granted here. I mean the way I was reading it is that the first sentence says they can limit it within their own, you know, unincorporated area, and then the second sentence to say they additionally have the reserved right to limit housing growth in all areas of that county if they do it uniformly.

MR. GRUESKIN: There's -- again, the way I read it is there's no limitation in the first sentence that the county's ability to exercise the right of limiting residential housing growth has to be done in all unincorporated areas, for instance. I think, under this

measure, the county has a superseding authority over any jurisdiction within it.

MR. ROPER: Sorry. Are you saying that's granted by the first sentence or it comes from some other source?

MR. GRUESKIN: I think that, once you read the first sentence and the second sentence, the county now has the right of initiative and it can do it uniformly if it so chooses. But that means it can also do it non-uniformly if it so chooses, and that --

MS. EUBANKS: Why does it mean that?

MR. GRUESKIN: I'm sorry.

MS. EUBANKS: Why does it mean that?

MR. GRUESKIN: Well, because if it may do it uniformly, it may also do it non-uniformly.

MS. EUBANKS: Or it may just not do it.

MR. GRUESKIN: Or it may not do it. You're right. There are three options.

CHAIRMAN STAIERT: Why is there necessarily a middle ground? I mean I read it to say you can either do it or you cannot do it. That's what's permissive. The permissive is either do it uniformly or don't do it at all.

MR. GRUESKIN: Well, and had the drafters intended -- had the drafters written it that way, because if they had written it if the county elects to impose a

residential growth limit, that it -- that growth limit shall apply uniformly across the county. But that's not what it says.

CHAIRMAN STAIERT: I mean I think it does. It just doesn't say it that artfully. It says may elect to limit housing growth uniformly. I mean I think that's the same thing. It doesn't have the "only uniformly," but it doesn't grant them the power to do it piecemeal either.

MR. GRUESKIN: But they've got the right in the first sentence to exercise the initiative in any fashion that they see fit. In any fashion that they see fit. There's no limitation in the first sentence. There's no requirement in the first sentence that if you are a home rule jurisdiction, for instance, that it has to be uniform within your municipality. You could do it in a portion of the municipality. And the language in the title indicates that it could be all or part of the local government within the county.

So how does that language not allow either a home rule municipality or a county to engage in limitations that apply to specific portions of the jurisdiction?

CHAIRMAN STAIERT: I think home rule can already do that. I mean they can zone something no growth and put it on the ballot and do it piecemeal. I think this is just saying a county can do it uniformly. But I don't

know.

MS. EUBANKS: Mr. Grueskin, in terms of your reading of the two sentences together, am I understanding you correctly that, in terms of the second sentence where it talks about imposing a growth limit uniformly in all local governments, you don't think all local governments includes the county? Because perhaps they've done something differently pursuant to the first sentence of Subsection (1).

I mean it talks about limiting growth uniformly in all local governments. Well, the county's a local government, and municipalities would be a local government. And so I'm just trying to --

MR. GRUESKIN: And I'm not disputing that there's that -- under that sentence the county could do it uniformly, that it applies across the board to all the jurisdictions that are listed in the first sentence.

MS. EUBANKS: Right.

MR. GRUESKIN: But because there is no "only" in there, that it can only apply to that limitation if it's going to be countywide uniformly across the other jurisdictions, it may also do it non-uniformly. Otherwise, may must mean must or shall, and it -- that's not the language that the Proponents used.

CHAIRMAN STAIERT: What if we just took out the

word uniformly and said permitting county voters by initiative and referendum to limit housing growth within the county? I mean does that solve the issue?

MS. EUBANKS: I'm not sure that that's an accurate description. I think I just have to disagree with Mr. Grueskin's interpretation. I view the second sentence, that a county has the authority to exercise in its discretion the imposition of a growth limit uniformly in all local governments, and if they choose not to exercise that authority, there somehow isn't some other default authority.

I mean we're taking -- you're arguing that there is somehow -- they could do something non-uniformly, and I just don't see that there.

CHAIRMAN STAIERT: Well, I think --

MS. EUBANKS: (Inaudible).

CHAIRMAN STAIERT: Yeah. I mean I guess I understand what you're saying about the first sentence is very broad, and I'm not sure the second sentence necessarily limits the first sentence.

And so if the first sentence is that an elector of every city, county, local county, whether statutory in home rule has the right to limit it by initiative and referendum, then that implies they have the right to limit it however they want by initiative and referendum. And

then the second sentence almost appears explanatory, I mean just -- and that extends also to counties.

MR. GRUESKIN: But if it is just explanatory, then it seems to me there is a surplusage, right?

CHAIRMAN STAIERT: Yeah, right.

MR. GRUESKIN: I mean --

CHAIRMAN STAIERT: I mean I guess that's what I'm wondering. That's what you're arguing, isn't it, that the second sentence really doesn't have a lot of meaning because the first sentence already swallowed everything up?

MR. GRUESKIN: Well, the first sentence is absolute authority. I think -- I'm just parodying your statement.

CHAIRMAN STAIERT: Yeah.

MR. GRUESKIN: The first sentence is absolute authority of the county voters among other voters to do whatever they want.

CHAIRMAN STAIERT: Right.

MR. GRUESKIN: And then the second sentence says it may be uniform. But the title as it exists suggests that the only county vote would be one that would impose a uniform, across-the-county limit, and that's not accurate.

MR. ROPER: I don't read it that way. I don't read the first sentence as granting the county the right

to non-uniformly limit housing growth across.

So I view the second one, the second sentence as adding an additional right. In fact, it says this right is further reserved on a countywide basis. I mean just my reading of it, it's adding an additional ability to limit housing growth, but it must be done uniformly across the county.

MR. GRUESKIN: So let me just suggest one other thing. And I understand your point.

The words "without legislative inhibition" suggests, to me anyway, that there are no limits in terms of any other restriction or requirement on the exercise of that authority, which would allow a county, if it so chose, to take the western half of the county and impose a housing limit and leave the eastern half to grow however it wanted or the jurisdictions within which.

So to my mind, the verbiage of "without legislative inhibition," has to suggest that that power is absolute in the first sentence.

CHAIRMAN STAIERT: Yeah, and I guess I'm at the point that I agree with that, and I think it is also quite likely that a county would take a certain portion, say around an airport or, you know, wherever there's high development and decide they can't get it zoned that way through the, you know, county commissioners or whatever.

And so they're going to put it on the ballot and limit growth in one area of the county, essentially rezone something.

So I don't think it -- and I don't think they're prohibited necessarily by the second sentence from doing just that, because I think the first sentence does give them very broad powers.

MR. ROPER: Do you have a reaction to removing "uniformly," if that would resolve your concern?

MR. GRUESKIN: Yeah, I think that taking out "uniformly" does address that concern.

CHAIRMAN STAIERT: I think, Sharon, I believe that's an accurate statement.

MS. EUBANKS: Yeah, I would oppose doing that because I read the two sentences differently. While I don't disagree that the authority granted under the first sentence is very broad, I think the second sentence says that if the county wants to impose a limit on other local governments located within the county, it has to be uniform within all the governments within that county.

And so to me there's a restriction there that means for the county itself as well as everyone else in the county.

And so to me "uniformly" is an important concept, because that's the only authority that they -- that county

has over other local governments in terms of imposing a growth limit on municipalities within the county.

That's just how I see it.

CHAIRMAN STAIERT: So you're the -- do you want the word in or out?

MR. ROPER: I didn't know if someone else or the Proponent had a --

CHAIRMAN STAIERT: Oh, yeah, did you want to say something?

MR. DUNN: Jason Dunn again. So just on that point, since no one else raised it, maybe I'm missing something, but in the measure itself, that clause says the 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. And I think that's conveyed somewhat in the words as parts of local government in the measure. But I agree with Mr. Grueskin, and I incorporate his argument into ours.

But I think it's clearly intended just -- in fact, I think Ms. Staiert certainly made our single subject argument for us when you said that a county could impose its own rezoning policies on a local government because the local government wouldn't do what the county wants or vice versa.

So you can very well imagine the scenario in El Paso County where they want to limit growth around the City of Colorado Springs, but they want to allow Monument to -- is that in El Paso County? I think so.

CHAIRMAN STAIERT: It is.

MR. DUNN: -- but they want to allow -- they want to push growth there. So it makes sense from a policies perspective that you'd want the county perhaps to have that right.

But I think the lang- -- I don't know what else the "and any part of such" means, and maybe you discussed that last time, but other than saying when you do something, it has to be uniform across whatever area you do it, but you don't have to do it countywide.

So you can say well, we're going to do it in Colorado Springs but not in Monument, or you say Colorado Springs and Black Forest or whatever, but not Monument, but where you do impose it, it has to be uniform.

So I think taking out "uniformly" does help. I have other title concerns, but I wanted to address that one specifically before we moved on.

MS. EUBANKS: Well, my response to that is if there was an "or" after "all local governments" or any part of such, I might agree with your interpretation. But the fact that it says "and any part of such," that that

language is covering municipalities that are located in part in a county.

So in terms of a municipality that crosses county boundaries, at which -- you know, other than the metro area, I can't give you an example right now, but that's what I think it says, "and any part of such," referring back to "all local governments," it means that anything that's totally included within the county or any part that's in that county, it's uniform every place within the county. That's just how I read it.

MR. DUNN: And to follow up on that, I agree, and particularly because on the other side of the comma phrase it says -- you know, if you take that out, it says and any part of such within such county. So I read it the same way as Sharon.

CHAIRMAN STAIERT: Yeah, and I read it that way too. I just am at the point where I'm not sure the second sentence matters all that much.

MS. EUBANKS: I think it matters a lot.

MR. DUNN: Yeah, I agree.

MS. EUBANKS: That's why I think it's an important component of the measure, it needs to be in the title, and it needs to have the word uniformly in the title. That's at least my opinion.

MR. DUNN: I guess the question is whether the

first sentence, when reserving the right to a county, does that enable them to limit growth just in the county area, the unincorporated county -- unincorporated county area, or also within any municipalities encompassed within the county?

CHAIRMAN STAIERT: No, I think it definitely let's you do it within a municipality in the county. I think the issue is whether that's got to be uniform or whether they can piecemeal it, you know, in such a way that I can limit it around the airport, but I'm not going to limit it elsewhere, you know, whatever that may be.

Did you have a comment?

MR. HAYES: Yes. I did say local county, and while there might be some confusion, I defined it as the statutory or home rule part of the county.

CHAIRMAN STAIERT: Yeah, that's not the confusion. The confusion is whether you could do just the east side and not the west side.

MR. HAYES: Of the county?

CHAIRMAN STAIERT: Yes.

MR. HAYES: Well, in Section 1, the electors of every city, town, city and county, or local county reserve the right.

CHAIRMAN STAIERT: Right. But do you have to limit the growth uniformly throughout the county or can

you do the east half and not the west half?

MR. HAYES: I see.

MS. EUBANKS: And while I agree that this first sentence doesn't limit that authority in any way, I would still make the argument that counties under the first sentence can only deal with unincorporated areas. And so if they choose to do two different limits or four or five, whatever, that may be possible perhaps under the first sentence.

I think the second sentence has specific authority for a county over the other local governments included in whole or in part within the county. And that's the significance of the second sentence.

MR. ROPER: Yeah, I agree with Sharon.

CHAIRMAN STAIERT: Okay. Let's leave it in then.

All right. What have you got?

MR. GRUESKIN: This is more exhausting than I had anticipated.

My other arguments I think are fairly straightforward. No. 2 in our motion for rehearing is an extension of what I talked about before in terms of granting the right of initiative. The title doesn't reflect it. In fact, in the ten principal counties that are listed, there is no right of initiative for two years. I think that's more than pertinent. I think it's central.

No. 3 was our point that the title could use clarification as to when this moratorium on permit issuance begins.

And No. 4, I think is maybe as important as anything else, which is that the types of petitioning procedures are specifically set forth. And to the extent that I've been unclear in the parenthetical where I say signature sufficiency, obviously it means signature sufficiency challenges.

It seems to me that those are the kinds of things that voters, because the right of initiative is fundamental, and because it is now a set of petitioning procedures that are dictated rather than subject to local decision making, ought to be set forth in the title.

CHAIRMAN STAIERT: Okay. And maybe we should refer to, you know, the setting procedures or whatever language we commonly use with regard to the initiative and referendum process. But I don't -- I'm not at the point that I think we need to spell each out individually. But it does establish a new set of procedures, and that would at least tell voters --

MS. EUBANKS: Well, and the title does include a phrase --

CHAIRMAN STAIERT: Permitting.

MS. EUBANKS: -- that it establishes procedural

requirements for initiatives for local governments for this purpose, for establishing growth limits.

CHAIRMAN STAIERT: Right.

MS. EUBANKS: And so I think that's sufficient, rather than getting into the business of contrasting this, changing this from --

CHAIRMAN STAIERT: Right.

MS. EUBANKS: -- that. I mean it's establishing these new procedures for this specific process of imposing a growth limit, and I think that's sufficient.

CHAIRMAN STAIERT: Okay. Do you have anything else, Mr. Dunn?

MR. DUNN: Unfortunately, yes.

CHAIRMAN STAIERT: Okay. Go ahead.

MR. DUNN: I have one technical concern that actually just occurred to me sitting here. It refers to the citizen right of referendum to limit growth. I'm not exactly sure what that is. If it's talking about the right of referendum petition, to petition something a local government does by act of council or commission, then unrelated to growth, I'm not quite sure how that would work, but that's usually the context of citizen action with related to referendum.

Obviously, a referendum in general is an action by the governmental entity. So I think there's some

confusion about voters being able to act by referendum in the title. That was just a technical point.

But more substantively -- I will pause there if anybody needs me to.

CHAIRMAN STAIERT: Go ahead.

MR. ROPER: Is this the second phrase permitting county voters by initiative and referendum?

MR. DUNN: Correct.

MR. ROPER: Is that what you're referring to?

MR. DUNN: To be fair, I think that's --

MS. EUBANKS: That's the terminology used in Sec. 1 and Sec. 2.

MR. DUNN: Right. So --

CHAIRMAN STAIERT: I think they're -- I mean I almost take it as the act of the vote, you can vote it in by initiative or referendum.

MR. DUNN: Once it's referred by the governmental entity, maybe that's --

CHAIRMAN STAIERT: Either way, it's permitting county voters to do a growth limitation, whether that's by initiative or referendum. We indicate there are new initiative standards.

MR. DUNN: Perhaps. Maybe the Proponents can address that point.

More substantively, you know, as we said in the

single subject argument, I think the one percent limitation is really the central feature of the measure, and that needs to be up front. That is the affirmative result of the measure. It certainly creates a new, what I refer to as a passive right in initiative and referendum on housing growth. But that requires some other act. But the immediate impact and effect of the measure is, of course, to put the limitation on the Front Range counties.

And I also note that in the title as drafted it refers to limiting growth to one percent annually for years 2019 and '20. Well, that's sort of accurate, right? It limits it beyond that, absent the voters doing something.

So the limitation is in perpetuity, it's not just in those two years, but it allows a right of initiative after 2020. And it should really be more accurately described that way.

So I would move the one percent up front. And then I think it should also refer to what's in the very last clause regarding the period between the vote and January 1, 2019 as an additive clause to the one percent limitation. Those go together.

In other words, I would take -- structurally, I think it should go the Front Range counties first and then the statewide provisions after that.

And I think the single subject clause needs to reflect that, in perhaps the substance of the measure, that the home rule impact. Again, as I said in the single subject argument, I think that upsetting the apple cart on the home rule relationship is profound. And the voters need to understand that that's a fundamental change to our system of government. And right now it's only referenced in the clause in the -- what we're calling the second sentence, I guess.

MS. EUBANKS: Mr. Dunn, were you also going to address your argument about whether the two provisions, I think, they appear in what is now --

MR. DUNN: The such counties and such cities and counties?

MS. EUBANKS: Yes.

MR. DUNN: Yeah, I think that's -- it was a little unclear to us whether, you know, that was -- in the measure itself, it's unclear whether it's an attempt to refer to the enumerated Front Range counties or statewide. It says no permit to build new privately-owned residential housing shall be issued within said counties, and it was unclear to us which those were.

And again, I think that if it is related to the Front Range counties, then that provision in the title ought to be attached to the one percent description.

MS. EUBANKS: And I think, at least that was my understanding of how those provisions relate, and that's why it was using the term, you know, relating to such counties and such cities and counties.

But perhaps I could ask the Proponent, Mr. Hayes, if that is, in fact, your intent in terms of the two provisions that just refer generally to the counties and cities and counties are ones, the specifically-enumerated cities and counties and counties, the Front Range group, whether that's your intent on the measure.

MR. HAYES: Yes, the said counties is referring to these counties and cities and counties listed in Section 2.

MS. EUBANKS: Okay.

MR. HAYES: Could have been mentioned that is the ones in Section 2, but when you say "said counties," you're referring to ones that you've talked about. At least that's my understanding. I don't know, when you say "said counties," you're not talking about every county in the state. You're being specific.

MS. EUBANKS: Right. Okay. Thank you. Because I do think it could be rewritten in a way to make that a little clearer. If the board is interested in going that direction, I think we could perhaps refine the title in that regard to make it clear as to which of those

provisions are all applying to the group of enumerated counties and cities and counties.

MR. DUNN: The only other point I want to make is the -- as Mr. Grueskin talked about, the absolute prohibition on growth in the period prior to January 1, 2019, and I think that's something that needs to be mentioned in the title.

My suggestion, again, would be to do the Front Range stuff first and then the statewide stuff second. It seems to flow perhaps better that way.

MS. EUBANKS: And in terms of, not your last statement, but the one about -- right now we just reference that there's a limit for 2019 and 2020, I guess the way I would read that is that that's the limit, it's absolute, there would be no way of changing it, you just have this limit for the two years, whether you need to go on and say without any right to changes, when you're just saying this is the limit for those two years. And then you have the clause talking about then it can be modified after that time period.

CHAIRMAN STAIERT: What if we said something like permitting the one percent growth limitation to be amended or something like that so that it's clear that the one percent continues to exist instead of such growth? I mean maybe that would --

MS. EUBANKS: I'm fine with that.

CHAIRMAN STAIERT: -- tie it back a little.

MR. DUNN: I think the right of initiative after 2020 is sort of the exception to the rule that one percent growth is hereby --

CHAIRMAN STAIERT: Maybe permitting the one percent growth limitation to be amended or repealed.

MR. DUNN: I think ideally it would say shall allow no growth until January 1, 2019, then shall allow one percent thereafter, unless voters, by initiative or referendum, change that limitation, which they can't do until 2021.

MR. ROPER: Right.

MS. EUBANKS: Are you interested in hearing how we might rework it in terms of making it clear, that I think those -- the last three clauses of the title just refer to the specifically-enumerated cities and counties and counties?

CHAIRMAN STAIERT: Sure.

MS. EUBANKS: I think that -- let's see. So right there where the cursor is on line 6, at the end of line 6, you would insert an "and for." Then you would cut out the language "limiting the growth of privately-owned residential housing units in." So I think then the phrase starts and for the City and counties of Broomfield and

Denver, and then the counties of Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer and Weld. And instead of a comma after Weld, you'd have a colon. Then you would have a number one paren, limiting the growth of -- yeah. You're so good. So one percent annually for the years 2019 and 2020. Then there would be a comma instead of a semicolon. Then I believe there would be a two paren, committing such growth limitations, and then we can modify that further based on your suggestion after we revamp this. Such growth limitations for such counties and cities and counties to be amended or repealed commencing in 2021 by initiative and referendum, and three paren, prohibiting the issuance of new permits for privately-owned housing units by local governments located in whole or in part within blah, blah, blah.

Whether that would be helpful in making it clear that all those provisions, as I understand the Proponents' intent, go toward the specifically enumerated. And I don't know if Mr. Dunn has any reaction to that.

CHAIRMAN STAIERT: Well, I guess speaking for him, I think he probably just wants them in reverse order.

MS. EUBANKS: I know he wants everything moved up.

CHAIRMAN STAIERT: Yeah, but even beyond that, I think he wants it to say -- you know, kind of in

chronological order first we are going to prohibit the issuance of new permits, then we're going to limit the growth, and then we're going to permit, right?

MR. DUNN: Exactly.

CHAIRMAN STAIERT: So that it's in chronological --

MR. DUNN: I do think -- aside from sort of stylistically, I think that's right. It sort of makes sense chronologically. And I agree that, yes, it all needs to be up front in the measure. But I really think that the piece that's actually inaccurate is limiting to the years '19 and '20, 'cause it really doesn't do that. It just allows a right of change after that. But the limitation is in perpetuity.

MR. ROPER: Yeah, I agree. That concept, I'm unsure, is captured in No. 2 because it says you can amend or repeal the limitations. It doesn't make clear, as I would want to, that those limitations stay in place after 2020, unless they're amended or repealed by initiative or referendum.

CHAIRMAN STAIERT: I'm not big on moving it up, because I think it detracts from the fact that this is -- has a statewide effect. But I am open to reversing the order spelling out specifically that it's limiting growth and taking out the -- or making something more absolute

about the '19 and '20.

And then -- I just think if you move it up, I think it gets lost on people, that they start to think it's just a Front Range initiative and they don't --

MS. EUBANKS: I'm not inclined to move it up front.

I'm trying to see if I can figure out a way to address Mr. Dunn's concern and Mr. Grueskin's concern about the idea that the limit is imposed. I think beginning in 2019, and then perhaps we modify the other phrase about permitting the one percent growth limitation to be amended or repealed --

CHAIRMAN STAIERT: Right.

MS. EUBANKS: -- whether that would convey the concept that the limit is there permanently, until it's amended or repealed.

CHAIRMAN STAIERT: Yeah.

MS. EUBANKS: And that can only happen after 2020.

CHAIRMAN STAIERT: Right. I think you could say limiting the growth of privately owned one percent annually starting in the year 2019, and then you could just say permitting such growth to be repealed in 2021. People could assume that that -- I don't know.

MS. EUBANKS: Are we driving you crazy?

CHAIRMAN STAIERT: No. He's following me.

MS. EUBANKS: Yeah, he's doing really well, considering ...

Do we have to include the year? Couldn't we just say starting in 2019?

MR. ROPER: Yeah.

CHAIRMAN STAIERT: Yeah.

Do we even need to say "such" anymore now that we have a 1, 2, 3, or ...

MR. DUNN: Maybe on No. 1 we could take out --

MS. EUBANKS: I don't know that that one was the in whole or in part within.

CHAIRMAN STAIERT: Yeah.

MS. EUBANKS: But perhaps --

CHAIRMAN STAIERT: Down in 3. I don't know.

MS. EUBANKS: The 2.

CHAIRMAN STAIERT: Yeah, 3.

MS. EUBANKS: Yeah, just because you're referring back to the "such growth."

CHAIRMAN STAIERT: Limiting growth, but --

MS. EUBANKS: See, I think if you took -- if you left the "such" --

MR. DUNN: Permitting the one percent growth limitation.

MS. EUBANKS: Yes. Permitting the --

CHAIRMAN STAIERT: One percent.

MS. EUBANKS: Whether that would be -- singular, I mean it's one limit per each. And then you could remove for such counties and such cities and counties.

CHAIRMAN STAIERT: Yeah.

MR. DUNN: To the initiative or referendum.

CHAIRMAN STAIERT: Oh, yeah.

MS. EUBANKS: The terminology is -- the measure says and, and so --

MR. ROPER: Yeah.

CHAIRMAN STAIERT: Yeah.

MS. EUBANKS: I guess I'd rather track, even though I'm -- I understand the concern about what referendum means, but the measure says referendum, and so I think we're -- or at least change the language of the measure. How that plays out, if it's approved by voters, I'm not sure, but ...

So does that help?

CHAIRMAN STAIERT: Do you have any comment?

MR. HAYES: Well, I have a problem with No. 1 beginning with prohibiting the issuance of new permits. This sentence could be left out of the ballot title completely. It's not that important. What's important is No. 2.

And to put it first, people are going to read

that and be confused about issuing new permit -- and prohibiting the issuance of new permits. They only read halfway through a ballot title half the time anyway.

That is not an important sentence, and it shouldn't be first. It's misleading. It's just not a good -- it's just not, you know, it could be left out again. It's a minor thing. Its purpose is to prevent a feeding frenzy of permits.

CHAIRMAN STAIERT: Well, if it was such a minor thing, you could have left it out of the initiative. I mean we heard this --

MR. HAYES: Well, it's not minor as far as I'm concerned. But I'm looking at voters. But I just don't think it should be in first place.

CHAIRMAN STAIERT: I think it makes more sense to do it chronologically.

MR. ROPER: I agree.

MS. EUBANKS: Have we addressed any of your concerns?

MR. GRUESKIN: Oh, absolutely.

I think the interesting parallel among 1, 2 and 3 is that the relevant time periods, the years, are all at the end of 1 and 2 but not at the end of 3. So I might take "in 2021" and put it after "by initiative and referendum." It just makes the parallel references easier

to see and read.
CHAIRMAN STAIERT: Okay.
MS. EUBANKS: I'd be fine with that.
CHAIRMAN STAIERT: Yeah.
MR. ROPER: So move "commencing in 2021"?
CHAIRMAN STAIERT: Yeah.
MS. EUBANKS: Repealed by initiative and referendum.
CHAIRMAN STAIERT: All right. Have you got anything else or ...
MS. EUBANKS: I know we haven't addressed the concern raised about specifying sort of both end of time period for the can't issue any permits at all, but I just don't know if voters really understand the nuance of when the vote's declared, you know, when the Governor signs the big version. I just -- I mean, obviously, it can't be -- it wouldn't be right when the voters approve it. I mean it's something shorter than that. But I just don't know if that's important to include.
And I know in the one that was done back in 2005-2006, it basically just said as of, you know, until this date, because it has a similar feature --
CHAIRMAN STAIERT: Right.
MS. EUBANKS: -- where no permits could be issued.

So I'm not inclined to make that change.
CHAIRMAN STAIERT: Yeah, I'm not either.
MR. ROPER: Suzanne, just for my comfort, what -- if this were approved by the voters in the 2018 ballot, what would that date likely be? How long from the date of the election until it's --
MS. EUBANKS: It depends.
CHAIRMAN STAIERT: It depends if there's a recount.
MR. ROPER: Declaration of voter approval.
CHAIRMAN STAIERT: I think it would be 30 days typically, but if there's a -- you know?
MS. EUBANKS: Yeah, I know.
CHAIRMAN STAIERT: If there's a recount --
MS. EUBANKS: It was sometime last week, I think, that the Governor signed a declaration on Amendment 71.
CHAIRMAN STAIERT: Yeah.
MS. EUBANKS: I mean there's different dates. I mean, he signed the one for the medical assisted suicide.
CHAIRMAN STAIERT: Yeah, he did that one a couple weeks ago.
MS. EUBANKS: Yeah, he did that earlier. I mean so it just all --
MR. ROPER: I agree. I don't think there's a need to address the start date.

MS. EUBANKS: Yeah. But those were -- all right. Do you want to --
CHAIRMAN STAIERT: Do you want me to read it, or do you want to move the changes?
MR. ROPER: Do you want to -- can you show us in ...
CHAIRMAN STAIERT: Why don't I read it while we're sitting.
An amendment to the Colorado Constitution 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 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.
MS. EUBANKS: Looking at the changes, I think I could maybe make a motion. I will try.
Because I think it should be that I would move that we deny -- yeah -- the motions for rehearing in terms of Mr. Dunn's arguments in Roman II and III and Mr. Grueskin's arguments in E, that we deny them, other than to the extent we've modified the title as shown on the screen.
MR. ROPER: Second.
CHAIRMAN STAIERT: All those in favor?
ALL BOARD MEMBERS: Aye.
CHAIRMAN STAIERT: Okay. That takes us to the fiscal impact. Who wants to go first on that one?
MR. DUNN: All right. Jason Dunn again. So Mr. Grueskin has, I think, a little bit more intricate arguments that we will incorporate into ours as well. Ours are more overarching, I think, in that it's -- the abstract -- I do think the abstract needs to actually contain a number, an estimate, or the fiscal impact statement as well.
But more specifically, I think what's important

is that with the limitation that's in place at the economic impact -- I understand that there is an indeterminate component to this and that it's hard to specify an exact impact. But I think there are some impacts that are unavoidable. And with these limitations on, and it doesn't discuss the impacts that will happen if there is a near cessation of housing construction in the metro area limited to one percent or less.

And I think those economic impacts need to be stated at the front end, whether that's in terms of job loss and population increase and the economic impacts that result from that. But I think to simply say, well, on the one hand there could be some loss of construction jobs, but on the other hand, property values could go up, and it's neither here nor there, I think doesn't really adequately describe what are the obvious and unavoidable economic impacts of the measure.

CHAIRMAN STAIERT: Okay.

MR. ROPER: Do you have a sense in any of the ten cities and counties or counties what the historical housing growth rate has been?

MR. DUNN: I don't. Mr. Grueskin represents the Housing Association, so he may be able to answer that. But I don't know the actual number. I know there's a heck of a lot of people moving into the Front Range. So I

would assume that housing growth is proportionate. In fact, the Proponents can probably answer that.

CHAIRMAN STAIERT: Mr. Grueskin.

MR. GRUESKIN: Thank you, Madam Chair. I don't have an answer to that question offhand, but legislative staff probably, maybe does.

I think the arguments that we've set forth are fairly self-evident. The statute requires this abstract to state whether or not -- excuse me -- the fiscal impact statement to state whether there is a fiscal impact of the measure. And there is no such statement. And so it's deficient in that regard.

The local government revenue spending has basically no, either existing or projected, estimates. So it's really just a non-informative narrative. And like Mr. Dunn, I appreciate the challenges here, but the statute was fairly clear as to what needed to be provided.

The paragraph entitled limited -- Limits on housing permits will also impact the distribution of various types of employment and connected activity doesn't really say anything.

And the notion that local government may receive additional property tax revenue, I suppose is a guess of some sort. It doesn't suggest any sort of parameter, and it doesn't acknowledge that there are TABOR limits that

will restrict property tax growth.

And I'll just go on to my arguments in D. Really, the statement of the abstract falls short. There are no estimates of recurring expenditures, there's no statement of the measure's economic benefits as required, and there's no estimate of fiscal liabilities, if it's enacted.

So there are certain boxes that were checked and certainly -- but not adequately in our view, and there are certain boxes that were not checked at all. And we believe that is contrary to what the statute requires.

CHAIRMAN STAIERT: Okay. Do you have anything you want to say about the impact?

MR. HAYES: I don't think an accurate figure can be established since this would be the first. There are some limits some places in some cities, but something with this mammoth, you know, effect has never been done as far as I know.

Rapid growth -- you know, I'm a real estate broker. Rapid growth increases the price of land, schools and roads. There doesn't seem to be adequate money for roads or schools at this time. We're always hearing about, you know, either bond issues or statewide to increase money for schools.

Houses pay, according to the Gatlinger amendment,

a low property tax for land. And, you know, vacant land, businesses and commercial have to pay a higher tax rate. That discourages -- we've had big companies move out of the state. You can see it in Seattle where you have so much traffic, and now the problem's become --

CHAIRMAN STAIERT: Well, do you have any comment on what legislative council put together in terms of an impact?

MR. HAYES: Well, I just think that there's things that are not here. If you're going to scrutinize this, then you need to cover a lot of areas that probably haven't been. So ...

CHAIRMAN STAIERT: I mean do you agree with this?

MR. HAYES: I don't think we can get an accurate figure.

CHAIRMAN STAIERT: So does that mean you agree with what they put together in the --

MR. HAYES: I think it's about as good as you can do.

CHAIRMAN STAIERT: Okay. All right. Thanks.

Let's's hear from legislative -- what does legislative council say?

MR. HARRY: Thank you. Madam Chairman, members of the Title Board, Todd Harry with legislative council staff.

I think in terms of the fiscal impact statement that we put together for this measure, we were following the guidance in both the statute that directs us to prepare that statement and the various elements within it.

I think I would point out that there's language in the statute that talks about it should be substantially similar in form and content to the fiscal notes that's provided by our office for legislation that's been produced during the session.

So we tend to get a lot of bills that are difficult to determine the precise, fiscal impact for a measure. And so there's all kinds of fiscal notes out there that we could point to where we've got an indeterminate expenditure increase for state government or indeterminate expenditure change for local governments.

Similarly, on the revenue side, sometimes it's difficult to predict exactly what those numbers will look like. Sometimes we'll try to put together a range or a minimum or a maximum. So there's a lot of different circumstances in which it makes it difficult for us to come up with a precise estimate.

And so in this particular measure here, Larson Silbaugh, who is the analyst who put this together for us, can talk more specifically about that if you'd like.

But you know, I think the challenge for us was

trying to determine in these Front Range counties which ones are going to -- is this one percent growth limitation going to be binding or not? And that can have different impacts on both property values and construction, employment and so on.

So I think our feeling was there is no way to get a precise estimate to put down.

CHAIRMAN STAIERT: Any questions?

MS. EUBANKS: I have a couple questions, being familiar with legislative fiscal notes. And as you've said, a lot of times you say that the impact is indeterminate, and yet in the abstract and in the statement itself, you don't really use that terminology. I mean you refer to sort of it's likely, it may happen, those sorts of things, but you never go that additional step and say, but the impact is indeterminate. Is there a reason that you didn't do that?

MR. HARRY: I'm not really sure why we didn't, you know, come out and say that. I think we were trying to say, depending on whether this constraint is binding in certain communities or counties, it would have this type of effect. If it's not binding, then it's going to have a different effect.

The combined impact is what -- we couldn't determine what that net impact was going to look like.

MS. EUBANKS: Okay. And the other thing, and maybe ...

MR. SILBAUGH: Madam Chair, members of the Title Board, Larson Silbaugh, economist for Colorado Legislative Council Staff. And we're also writing this from the perspective of statewide impact rather than just the ten counties.

And so to the extent that there is a binding limit on these ten counties, there could be growth in Elizabeth or in Elbert County or in Clear Creek County. And so from a statewide perspective, we never made the assumption that this would reduce the amount of overall construction in the state for overall population growth.

And so I think that's one of the difficulties we had, was, you know, looking at it from a state perspective is this would be a statewide measure versus, you know, trying to get into the details for everything that would happen in every single one of these ten counties as well as the local municipalities within the county. So I just wanted to add that.

MS. EUBANKS: I appreciate that. Don't go too far.

Several of the arguments made in the motions for rehearing, the statute is very specific, and I'm referring to 1-40-105.5, Subsection (3) regarding the abstract, that

the abstract must include a very specific list of items.

I would argue that I don't think the Title Board has jurisdiction to deal with the fiscal impact statement, even though I think Mr. Grueskin made an argument regarding the sufficiency of the fiscal impact statement, because, as I read 1-40-107, when we're dealing with motions for rehearing, it only talks about motions for rehearing regarding the abstract.

And so I don't think the Title Board has any authority to tell legislative council anything about their fiscal impact statement, per se.

But in regard to the abstract, I would find it helpful for you to sort of walk us through the abstracts regarding sort of the laundry list of items in Subsection (3) of 105.5 and pointing out sort of, you know, the, A, the estimate of the effect of the measure on state and local government revenues, expenditure, taxes, that this is that portion of the abstract.

I mean I think that would just be helpful in understanding how you view the items required and where they appear in your abstract. If that's possible.

MR. SILBAUGH: Larson Silbaugh again with legislative council staff.

So looking at the abstract, it required an estimate of the effect the measure will have on state and

local government revenues, expenditures, taxes and fiscal line as though the measure is enacted.

Our intent was for the paragraph with the subhead Local government revenue and spending to communicate that, that there would, in fact, be less revenue from building permits, and then expenditure impacts from less services provided. So just as a, you know, summary of that paragraph.

MS. EUBANKS: Okay.

MR. SILBAUGH: The abstract is also required to provide a statement of the measure's economic benefit for all Coloradans, and our attempt to meet that requirement is in the paragraph entitled Economic impacts where we can't say conclusively whether this would be -- what the economic impacts would be for all Coloradans.

You know, it depends on your individual economic circumstances, whether you're a homeowner, whether you're a landlord, whether you're looking to move into one of these ten Front Range counties.

And so because we can't identify an impact for all Coloradans, we tried to provide a narrative just explaining that there are going to be impacts, you know, in terms of jobs and population growth. And it really depends on your economic circumstances what the impact would be on you.

The abstract is also required to include an estimate of the amount of any state and local government recurring expenditures or fiscal liabilities if the measure enacted. We believe that the paragraph entitled Local government revenue and spending beginning with "Beginning in fiscal year 2018-19" conveys that there are going to be ongoing expenditure and revenue impacts from the measure.

The other requirement in statute is, for any initiating measure that modifies the state tax laws, an estimate, if feasible, the impact on the average taxpayer if the measure enacted. This isn't a tax measure, so we didn't include that.

And then E, you know, the following statement, the abstract includes estimates of the fiscal impact, and that's that first paragraph in the abstract.

MS. EUBANKS: Okay. That's very helpful.

One question about the requirement in 3(b), which in the statute it says, A statement of the measure's economic benefits for all Coloradans. To me economic benefits means something different than economic impacts.

And this goes to argument that both Mr. Grueskin and Mr. Dunn have made in terms of sort of some of the potential negative impacts, economic impacts, haven't been adequately reflected. And I'm curious as to why you used

the terminology economic impacts and included negative, because to me benefits means positive and not negative, and whether there was any discussion about that.

MR. HARRY: Todd Harry again for the legislative council Staff.

I think we took the position that we were interpreting that as economic impacts as opposed to economic benefits. For one, I guess our feeling was it's hard to find or to define exactly what that term exactly means from our standpoint.

So since we write fiscal notes for legislation, again, we are trying to decipher sort of what the economic impacts of this measure would be, both positive and negative, in terms of property values or changes there, changes in construction employment. But really we're just focusing on what are the positive economic benefits.

MS. EUBANKS: The terminology in the statute is economic benefits. I mean --

MR. HARRY: Right.

MS. EUBANKS: Okay. Thank you.

CHAIRMAN STAIERT: Well, I mean I tend to agree. I think it would be impossible to actually come up with, I think they called it an accurate estimate. I think even an inaccurate estimate could be difficult under this initiative. I mean it has to do with what the growth

would be anyway, what the economy is doing, whether the voters vote it in or vote it out, whether it's one home rule or just part of some other city.

So I'm not inclined to change any of it. I don't think we could. We may be able to get an impact on what it would cost for that time period where there's a moratorium, but then we'd have to know how long the moratorium was going to be.

So I mean even limited to that tiny, little piece of it, we couldn't even estimate that, because we don't know whether it would be one month, two months, six weeks.

So I'm not inclined to change it at all.

MR. ROPER: I agree. I think it would be helpful to know what the growth has been, particularly in the ten counties or city and counties at issue, because you know, if, for example, it had been 5 percent, then I think you could reasonably project that it would have a very significant impact, to limit that to one percent. But I don't have that information. I don't know that it needs to be included.

MS. EUBANKS: And you know, I just want to note, for the record, that, you know, this is a matter of first impression for the Title Board. This is an entirely new process this cycle, and I think we're all doing our best to try to figure out what it means. And I'm sure we'll

probably hear from the court at some point in terms of what it means.

And having dealt with fiscal notes from the legislative perspective, I understand the difficulties of coming up with precise numbers. I know in many cases it's not possible.

I sort of do wonder whether or not it would be helpful to at least, you know, include the concept of, you know, that it's an indeterminate amount in terms of the impacts as described.

I do have a problem with the last paragraph of the abstract in terms of being economic impacts rather than benefits. I think -- I understand, in terms of the direction of the fiscal impact statement, which is controlled by other portions of 105.5, and it's supposed to be similar to the legislative fiscal note. And those generally balance both the positive and negative economic impacts of a measure.

I think there's significance to the fact that 3(b) only talks about economic benefits. And so I think that the heading on that paragraph should be changed, and I think that the second sentence should be removed. I know that both Mr. Grueskin and Mr. Dunn in their motions for rehearing made arguments that sort of the negative impact needed to be clarified.

And to me, as a benefit, I don't think the negative impact should be included at all. And if anything, the last sentence, which they focus on, I think that it should be changed just to reflect that perhaps construction employment, retail trade, and population may increase in communities where there are not binding growth limits, because that would be perhaps a positive for those communities in terms of if it's true that housing growth would actually shift, for example, outside the Front Range area specified in the measure.

But I just think that the abstract is supposed to include certain things. I appreciate the delineation that the -- the heading Local government revenue and spending includes the requirements of 3(a) and 3(c), and that any economic impact paragraph is supposed to incorporate 3(b). But I just don't think that that's -- it's doing what the terminology of the statute is requiring.

That's just me giving some meaning to the term benefit. Obviously, it was used for a reason rather than economic impacts. And so I'm just trying to stay true to the statutory language.

MR. ROPER: I appreciate that. I would probably look at it slightly differently. I would view it as maybe to discuss net benefits, which I think you can't do without taking into account some of the costs that would be imposed.

You know, perhaps the title should -- you know, maybe economic impacts is not strictly the correct title for the paragraph.

But I think you can't discuss the benefits and ignore costs. I think to accurately address benefits, you need to address net benefits, which would have included a discussion of costs.

CHAIRMAN STAIERT: Yeah, and I think -- I think I tend to agree with that. I mean they didn't -- there's no requirement that they delineate it out the way the statute says. It's just what has to be in it. And I think that, you know, some of these paragraphs are bleeding into the other, and I don't see any problem with that.

But I think you can't just say, you know, here are benefits, and oh, by the way, you don't have to pay anything. I mean to obtain a benefit, you need to know what the cost was and to see what the benefit is.

So I think that I don't really have any issues with the way it was drafted.

Do you want to make a motion on the rehearing then, Glenn.

MS. EUBANKS: On the abstract?

CHAIRMAN STAIERT: On the abstract.

MR. ROPER: I move for Initiative 4 that we deny

the motions for rehearing with respect to the abstract.

CHAIRMAN STAIERT: Second.

All those in favor?

CHAIRMAN STAIERT: Aye.

MR. ROPER: Aye.

CHAIRMAN STAIERT: Opposed?

MS. EUBANKS: No.

CHAIRMAN STAIERT: All right. I think that's everything. Kind of a long hearing.

That concludes the rehearing. The time is 3:50, and we are adjourned.

(The hearing was concluded at approximately 3:50 p.m., January 4, 2017.)

CERTIFICATE

I, Deborah D. Mead, Certified Shorthand Reporter and Notary Public, do hereby certify that the said proceedings were transcribed by me from a recording; that the same is a full, true, and correct transcript of the recording, except where noted.

I further certify that I am not attorney, nor counsel, nor in any way connected with any attorney or counsel for any of the parties of said hearing, no otherwise interested in the outcome of this hearing.

IN WITNESS WHEREOF, I have affixed my signature and seal this 30th day of January 2017.

My commission expires June 18, 2017.

_____

Deborah D. Mead
Certified Shorthand Reporter

NOTICE OF ELECTION TO INCREASE TAXES ON A CITIZEN PETITION

DATE FILED: January 31, 2017 6:54 PM

STATEWIDE ELECTION DAY IS

Tuesday, November 4, 2014

Voter service and polling centers open 7 a.m. to 7 p.m.

This election is a mail ballot election. For information about voter service and polling centers, please contact your county election office. Contact information for county election offices appears inside the back cover of this booklet.

2014 STATE BALLOT INFORMATION BOOKLET

and

Recommendations on Retention of Judges

Legislative Council of the

Colorado General Assembly

Research Publication No. 639

EXHIBIT 2

Voter "Cheat Sheet" for Measures on 2014 Ballot

	YES	NO
Amendment 67: Definition of Person and Child	☐	☐
Amendment 68: Horse Racetrack Casino Gambling	☐	☐
Proposition 104: School Board Meeting Requirements	☐	☐
Proposition 105: Labeling Genetically Modified Food	☐	☐

*****This is not a ballot*****

*A **YES** vote on any ballot issue is a vote **IN FAVOR OF** changing current law or existing circumstances, and a **NO** vote on any ballot issue is a vote **AGAINST** changing current law or existing circumstances.*

COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

Room 029 State Capitol
Denver, Colorado 80203-1784
E-mail: lcs.ga@state.co.us
303-866-4799 FAX: 303-866-3855 TDD: 303-866-3472

September 10, 2014

This booklet provides information on the four statewide measures on the November 4, 2014, ballot and on the judges who are on the ballot for retention in your area. The information is presented in two sections.

Section One — Analysis and Titles and Text

Analysis. Each statewide measure receives an analysis that includes a description of the measure and major arguments for and against. Careful consideration has been given to the arguments in an effort to fairly represent both sides of the issue. Each analysis also includes an estimate of the fiscal impact of the measure. More information on the fiscal impact of measures can be found at **www.coloradobluebook.com**. The state constitution requires that the nonpartisan research staff of the General Assembly prepare these analyses and distribute them in a ballot information booklet to registered voter households.

Titles and text. Following each analysis is the title that appears on the ballot, which includes information about whether the measure changes the constitution or statute. Following the ballot title is the legal language of each measure, which shows new laws in capitalized letters and laws that are being eliminated in strikeout type.

Amendments and Propositions

A measure placed on the ballot by the state legislature that amends the state constitution is labeled an "Amendment," followed by a letter. A measure placed on the ballot by the state legislature that amends the state statutes is labeled a "Proposition," followed by a double letter.

A measure placed on the ballot through the signature-collection process that amends the state constitution is labeled an "Amendment," followed by a number between 1 and 99. A measure placed on the ballot through the signature-collection process that amends the state statutes is labeled a "Proposition," followed by a number between 100 and 199.

Constitutional vs. Statutory Changes

The first line of the analysis of each measure indicates whether the measure is a change to the constitution, statute, or both. Of the four measures on the ballot, two propose changes to the state constitution, and two propose changes to the state statutes. Voter approval is required in the future to change any constitutional measure adopted by the voters, although the legislature may adopt statutes that clarify or implement these constitutional measures as long as they do not conflict with the constitution. The state legislature, with the approval of the Governor, may change any statutory measure in the future without voter approval.

Section Two — Recommendations on Retaining Judges

The second section contains information about the performances of the Colorado Supreme Court justices, the Colorado Court of Appeals judges, and district and county court judges in your area who are on this year's ballot. The information was prepared by the state commission and district commissions on judicial performance. The narrative for each judge includes a recommendation stated as "BE RETAINED," "NOT BE RETAINED," or "NO OPINION."

Information on Local Election Officials

The booklet concludes with addresses and telephone numbers of local election officials. Your local election official can provide you with information on polling places, absentee ballots, and early voting.

By selecting the individiual measures, you can go directly to the Analysis or Title and Text of the measure.

TABLE OF CONTENTS

(Selecting the Judges link will open the Colorado Judicial Performance web site.)

This publication, as well as a link to the full text of the fiscal impact statements for each measure, can be found at: www.coloradobluebook.com

Contact information for county election offices appears inside the back cover of this booklet.

Amendment 67
Definition of Person and Child

ANALYSIS

Amendment 67 proposes amending the Colorado Constitution to:

- specify that the terms "person" and "child" in the Colorado Criminal Code and the state wrongful death statutes include unborn human beings.

Summary and Analysis

Amendment 67 creates a constitutional provision stating that the terms "person" and "child" in the Colorado Criminal Code and the state wrongful death statutes must include unborn human beings. The measure does not define the term "unborn human beings."

Colorado Criminal Code. The Colorado Criminal Code contains criminal offenses in state law. It currently defines a "person," when referring to the victim of a homicide, as a human being who had been born and was alive at the time of the criminal act. The code excludes a human embryo, a fetus, and an unborn child at any stage of development prior to live birth from the definition of "person." The Colorado Criminal Code does not uniformly define "child;" the definitions vary based on different offenses.

State wrongful death statutes. State wrongful death statutes allow surviving spouses, families, and estates to seek compensation for negligent actions resulting in the death of a person. These statutes do not define "person" or "child."

Laws concerning offenses against pregnant women. Colorado law defines an unlawful termination of a pregnancy as the termination of a pregnancy by any means other than birth or a medical procedure with the woman's consent. Under Colorado law, it is a crime to intentionally, knowingly, or recklessly cause an unlawful termination of a woman's pregnancy, including vehicular unlawful termination of a pregnancy. Unlawful termination of a pregnancy and offenses against a person are categorized in separate sections of the law and may carry different penalties. If a person commits an offense against a pregnant woman that results in the loss of her pregnancy, the offender can be

charged with at least two crimes — the offense against the woman and the unlawful termination of the pregnancy. The law exempts pregnant women and health care providers from criminal prosecution for acts related to a woman's pregnancy.

Colorado law also allows a woman to seek compensation from any person who intentionally, knowingly, or recklessly causes an unlawful termination of her pregnancy. Colorado law states that a woman is not liable for damages for acts she takes with respect to her own pregnancy, nor is a health care provider for providing services. Additionally, the law excludes a human embryo, fetus, and an unborn child at any stage of development prior to live birth from the definition of "person."

Effect of Amendment 67 on abortion and reproductive health care. The measure does not specify how its provisions will apply to health care providers or medical procedures. Depending on how the term "unborn human being" is defined or interpreted, the measure may impact the availability of abortions under Colorado law. It may also impact the availability of other medical procedures, devices, and medications, such as certain forms of birth control or in vitro fertilization.

For information on those issue committees that support or oppose the measures on the ballot at the November 4, 2014, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html

Arguments For

1) One of government's responsibilities is to protect its citizens from harm. Amendment 67 protects pregnant women and unborn children by making it illegal to kill or otherwise harm an unborn human being and holds perpetrators both criminally and civilly liable. Crimes against unborn human beings should be subject to the same legal penalties as crimes against human beings who have been born. Under Amendment 67, a person who kills an unborn human being could be charged with homicide.

2) By including unborn human beings in the definition of "person," the measure may establish the legal foundation to protect the unborn by ending the practice of abortion in Colorado. If the Colorado

Constitution recognizes an unborn human being as a person, the measure may allow a district attorney to prosecute abortion as homicide or child abuse and could limit the willingness of health care providers to perform abortions in Colorado.

Arguments Against

1) Amendment 67 is unnecessary and unclear. There are already laws in place to protect pregnant women endangered by the criminal acts of others, while respecting the personal medical decisions of a woman and her health care provider. The term "unborn human being" has no established legal or medical definition in Colorado law, and could apply at the earliest stages of pregnancy. The measure could have far-reaching consequences, including making pregnant women and health care providers criminally and civilly liable for a pregnancy that does not result in a live birth.

2) Amendment 67 allows government intrusion into the personal health care decisions of individuals and families and makes no exceptions for the privacy of the doctor-patient relationship. The measure could make abortion a crime, including those for victims of rape or incest. It may prevent doctors, nurses, and pharmacists from providing certain types of medical care to a woman, including some forms of birth control such as emergency contraception and intra-uterine devices, and treatment for miscarriages, tubal pregnancies, cancer, and infertility.

Estimate of Fiscal Impact

Amendment 67 has no immediate impact to state or local government revenues or expenditures. The measure does not require any new action or additional services, nor does it impose any new fines or charges. Depending on how the measure is interpreted and applied by the courts, or whether the state legislature adopts specific legislation, this may result in new criminal offenses and penalties being created or applied in certain situations when a pregnancy is terminated. These potential criminal penalties may increase costs for state and local law enforcement agencies, the courts, and the Department of Corrections for the investigation and incarceration of individuals committing offenses. The potential costs cannot be determined at this time.

Amendment 67
Definition of Person and Child

BALLOT TITLE AND TEXT

The ballot title below is a summary drafted by the professional staff of the offices of the secretary of state, the attorney general, and the legal staff for the general assembly for ballot purposes only. The ballot title will not appear in the Colorado constitution. The text of the measure that will appear in the Colorado constitution below was drafted by the proponents of the initiative. The initiated measure is included on the ballot as a proposed change to current law because the proponents gathered the required amount of petition signatures.

Ballot Title: Shall there be an amendment to the Colorado constitution protecting pregnant women and unborn children by defining "person" and "child" in the Colorado criminal code and the Colorado wrongful death act to include unborn human beings?

Text of Measure:

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

In the constitution of state of Colorado, Article XVIII, **add** (17) as follows:

Section 17. Protection of Pregnant Mothers and Unborn Children

(1) Purpose and findings. IN 2009, JUDGES OF THE COLORADO STATE COURT OF APPEALS IN PEOPLE V. LAGE 232 P.3d 138 (COLO. APP. 2009) CONCLUDED THAT:

(a) "THERE IS NO DEFINITION OF 'PERSON' OR 'CHILD' OF GENERAL APPLICABILITY IN THE CRIMINAL CODE" (MAJORITY OPINION BY JUDGE ROY); AND

(b) "THIS IS AN AREA THAT CRIES OUT FOR NEW LEGISLATION. OUR GENERAL ASSEMBLY, UNLIKE CONGRESS AND MOST STATE LEGISLATURES, HAS PRECLUDED HOMICIDE PROSECUTIONS FOR KILLING THE UNBORN" (JUDGE CONNELLY CONCURRING IN PART AND DISSENTING IN PART).

(2) Definitions. IN THE INTEREST OF THE PROTECTION OF PREGNANT MOTHERS AND THEIR UNBORN CHILDREN FROM CRIMINAL OFFENSES AND NEGLIGENT AND WRONGFUL ACTS, THE WORDS "PERSON" AND "CHILD" IN THE COLORADO CRIMINAL CODE AND THE COLORADO WRONGFUL DEATH ACT MUST INCLUDE UNBORN HUMAN BEINGS.

(3) Self-executing, and severability provision. ALL PROVISIONS OF THIS SECTION ARE SELF-EXECUTING AND ARE SEVERABLE.

(4) Effective date. ALL PROVISIONS OF THIS SECTION SHALL BECOME EFFECTIVE UPON OFFICIAL DECLARATION OF THE VOTE HEREON BY PROCLAMATION OF THE GOVERNOR PURSUANT TO SECTION 1(4) OF ARTICLE V.

Amendment 68
Horse Racetrack Casino Gambling

ANALYSIS

Amendment 68 proposes amending the Colorado Constitution to:

- permit casino gambling at horse racetracks in Arapahoe, Mesa, and Pueblo counties, limited to one racetrack in each county; and

- distribute new casino gambling tax revenue to K-12 public schools.

Summary and Analysis

Horse racetrack casino gambling. Amendment 68 expands legal gambling in the state by permitting limited-stakes casino gambling at horse racetracks in Arapahoe, Mesa, and Pueblo counties. One racetrack in each county may offer casino gambling, which may include slot machines, the card games of blackjack and poker, and the games of roulette and craps. Current laws that regulate horse racing and betting on horse races are unchanged by the measure.

Before obtaining a limited gaming license, each racetrack must host 30 or more live horse race days per year for at least five consecutive years and be licensed to allow betting on horse races. Within the first 30 days of operating casino gambling, each horse racetrack must pay a $25 million one-time fee to the state. A local government may impose a one-time impact fee and ongoing annual impact fees; the fee amount must be negotiated and be reasonably related to the local government's expenses that occur as a result of allowing casino gambling at the racetrack.

Arapahoe County has one existing horse racetrack, Arapahoe Park, which could be licensed for casino gambling in 2015. Because Mesa and Pueblo counties do not currently have an operational horse racetrack, casino gambling in those counties could not begin until at least 2019.

Once approved, each racetrack is authorized to have 2,500 slot machines, or more if approved by the Limited Gaming Control Commission in the Colorado Department of Revenue. No restrictions are placed on the number of tables for card games, roulette, or craps. Hours of operation are limited to 8:00 a.m. to 2:00 a.m. the following day, unless the local government in which the racetrack is located approves extended hours. Only adults 21 years of age and older may gamble, and no single wager may exceed $100.

K-12 public school funding. Once a new horse racetrack casino opens, Amendment 68 will generate new funding for public schools. In addition to the one-time $25 million fee, each racetrack must pay 34 percent of its adjusted gross proceeds (AGP) to the state. AGP includes all revenue from casino gambling at the racetrack less the amount paid to winners. New gambling tax revenue, and the $25 million one-time fee, are deposited in the newly created K-12 Education Fund and distributed on a per-pupil basis to public school districts and to a state agency that authorizes public charter schools. Funding from the new gambling tax revenue must be used to address local education issues and may not replace existing funding for public schools.

Because of its location in the Denver metropolitan area, a new casino at Arapahoe Park could provide up to $114.5 million each year for public schools, or about $132 per student beginning in budget year 2016-17. For the 2014-15 school year, public schools received about $7,021 per student. If new racetrack casinos open in Mesa and Pueblo counties, public schools could receive additional funding in the future. State and local tax revenue from casino gambling at horse racetracks is exempt from constitutional limits on government revenue and spending.

Current casino gambling in Colorado. Gambling in Colorado may only take place in areas that have received constitutional authority through a statewide vote, except for casinos on Indian reservations, which are not regulated by the state. In 1990, voters statewide approved limited-stakes gambling in Central City and Black Hawk in Gilpin County, and Cripple Creek in Teller County.

In 1992, the state's voters approved a referred constitutional amendment requiring a local vote in favor of gambling in any city, town, or county granted constitutional authority for gambling in a statewide vote. In 2008, state and local voters approved an expansion of

limited-stakes gambling in Gilpin and Teller counties, including higher bet limits and extended hours of operation. Amendment 68 authorizes the same type of expanded gambling at horse racetracks in three counties, without requiring a local vote to affirm or deny that authority.

State tax revenue from current casino gambling. Tax revenue from gambling in Central City, Black Hawk, and Cripple Creek, after administrative expenses are paid, totaled $93.9 million in state budget year 2013-14. This revenue is deposited in the Limited Gaming Fund and distributed each year to community colleges, counties, cities, historic preservation, economic development programs, and other state purposes. Taxes and license fees paid by existing casinos cover the cost incurred by the state to regulate gambling in the mountain communities.

For information on those issue committees that support or oppose the measures on the ballot at the November 4, 2014, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html

Arguments For

1) Amendment 68 provides additional money for public schools without raising income, property, or sales taxes on individuals or businesses. Investing in public education is an important way to ensure a strong Colorado economy capable of competing in today's global marketplace. The recent recession required public schools to reduce programs and cut budgets. Amendment 68 increases the state's investment in public education by providing up to $114.5 million annually to school districts and charter schools beginning in 2016, and diversifying the sources of funding for public schools.

2) This measure will add jobs and increase economic activity in host communities. In the short term, improving the Arapahoe Park racetrack will create new construction jobs. Once a horse racetrack casino is operational, more permanent jobs will put additional money into the regional economy. For example, the U.S. Census Bureau reports that the average casino employed about 200 people in 2012.

In the longer run, new gambling opportunities may create additional jobs in other hospitality sectors, such as hotels and restaurants, and help maximize tourism spending in the state.

Arguments Against

1) The measure directly benefits only a single commercial interest for the next five years, undermines the economies in existing gambling communities, and puts dedicated tax revenue for important state programs in jeopardy. Until 2019, only Arapahoe Park can receive a new limited gaming license. Existing legal gambling in Black Hawk, Central City, and Cripple Creek depends on customers from the Front Range metropolitan areas. When mountain communities lose customers to the new casino in Arapahoe County, these mountain communities lose economic activity and pay less in gambling taxes. This existing tax revenue from the Limited Gaming Fund helps support historic preservation, community colleges, tourism promotion, economic development, and other state and local services. Amendment 68 places this funding at risk.

2) Amendment 68 does not give local voters the option to decide if gambling should be authorized in their communities. In 1992, voters passed a constitutional requirement that local communities conduct a separate election. Large commercial attractions such as casino gambling can have negative impacts that increase pressure on governmental services in both the host and surrounding communities. These services include law enforcement, court services, traffic control, and road repair. In addition, voter approval will not be required for the casino to expand its hours of operation. This measure may burden local communities with negative consequences without providing those communities the opportunity to decide the issue in a separate election.

Estimate of Fiscal Impact

State revenue. Amendment 68 increases state revenue to the K-12 Education Fund by up to $81.9 million in budget year 2015-16, and up to $114.5 million in budget year 2016-17, the first full budget year of implementation. The amendment requires that all new gambling tax revenue be allocated to K-12 public schools. Based on state projections of student enrollment, new revenue will equate to about $96 more funding per student for the 2015-16 school year, and about $132 more funding per student beginning with the 2016-17 school year.

New gambling tax revenue will be partially offset by reduced revenue from existing gambling taxes. Only Arapahoe Park in Arapahoe County can be authorized to conduct casino gambling in the next five years. Arapahoe Park is expected to attract some gamblers who would otherwise gamble at casinos in Black Hawk, Central City, and Cripple Creek. For this reason, gambling tax revenue to the Limited Gaming Fund will decrease. Reduced revenue to the fund decreases state allocations to community colleges, counties and cities in which gambling is currently authorized, historic preservation, economic development programs, and the state General Fund. Table 1 shows the estimated maximum net change in tax revenue as a result of Amendment 68.

Table 1. Estimated Maximum Tax Revenue Change Under Amendment 68*

	Budget Year 2015-16	Budget Year 2016-17
K-12 Education Fund	$81.9 million	$114.5 million
Limited Gaming Fund	($14.6 million)	($29.5 million)
Total (Net) State Revenue	**$67.2 million**	**$85.0 million**

**This summary shows changes from current law under the measure for each budget year. Parentheses indicate a decrease in funds.*

State spending. In addition to allocating new gambling tax revenue to public schools, Amendment 68 also increases state spending to regulate gambling at Arapahoe Park, and to perform audits of the K-12 Education Fund. Increased state spending is estimated at about $800,000 per year beginning in budget year 2015-16. The state's cost to regulate existing casino gambling was about $11 million in budget year 2013-14. The state's cost to regulate casino gambling at horse racetracks will be covered either with new fees imposed on racetrack owners by the Limited Gaming Control Commission or from other state funds.

State Spending and Tax Increases

The state constitution requires that the following fiscal information be provided when a tax increase question is on the ballot:

- the estimated or actual state spending under the constitutional spending limit for the current year and each of the past four years with the overall percentage and dollar change; and

- for the first full year of the proposed tax increase, an estimate of the maximum dollar amount of the tax increase and of the amount of revenue the state may keep under the constitutional spending limit without the increase.

Table 2 shows the dollar amount of state spending under the constitutional spending limit.

Table 2. State Spending

	Actual FY* 2010-11	Actual FY 2011-12	Actual FY 2012-13	Estimated FY 2013-14	Estimated FY 2014-15
State Spending	$9.4 billion	$10.3 billion	$11.1 billion	$11.6 billion	$12.2 billion
Four-Year Dollar Change in State Spending: $2.8 billion					
Four-Year Percent Change in State Spending: 29.8 percent					

***FY = fiscal year. The state's fiscal (or budget) year runs from July through June.*

The numbers in Table 2 show state spending from 2010 through 2014 for programs that were subject to the constitutional spending limit during those years. However, the constitution allows a program that operates similarly to a private business to be exempt from the limit if it meets certain conditions. Because the exempt status of some programs has changed during the last five years, the numbers in Table 2 are not directly comparable to each other.

Table 3 shows the revenue expected from the new tax, and state fiscal year spending without the tax for FY 2016-17, the first full fiscal year for which the increase would be in place.

Table 3. Estimated State Fiscal Year Spending and the Proposed Casino Gambling Tax

	FY 2016-17 Estimate
State Spending Without the New Tax	$15.5 billion
Revenue from the New Tax	$114.5 million

Amendment 68
Horse Racetrack Casino Gambling

BALLOT TITLE AND TEXT

The ballot title below is a summary drafted by the professional staff of the offices of the secretary of state, the attorney general, and the legal staff for the general assembly for ballot purposes only. The ballot title will not appear in the Colorado constitution. The text of the measure that will appear in the Colorado constitution below was drafted by the proponents of the initiative. The initiated measure is included on the ballot as a proposed change to current law because the proponents gathered the required amount of petition signatures.

Ballot Title: SHALL STATE TAXES BE INCREASED $114,500,000 ANNUALLY IN THE FIRST FULL FISCAL YEAR, AND BY SUCH AMOUNTS THAT ARE RAISED THEREAFTER, BY IMPOSING A NEW TAX ON AUTHORIZED HORSE RACETRACKS' ADJUSTED GROSS PROCEEDS FROM LIMITED GAMING TO INCREASE STATEWIDE FUNDING FOR K-12 EDUCATION, AND, IN CONNECTION THEREWITH, AMENDING THE COLORADO CONSTITUTION TO PERMIT LIMITED GAMING IN ADDITION TO PRE-EXISTING PARI-MUTUEL WAGERING AT ONE QUALIFIED HORSE RACETRACK IN EACH OF THE COUNTIES OF ARAPAHOE, MESA, AND PUEBLO; AUTHORIZING HOST COMMUNITIES TO IMPOSE IMPACT FEES ON HORSE RACETRACKS AUTHORIZED TO CONDUCT LIMITED GAMING; ALLOWING ALL RESULTING REVENUE TO BE COLLECTED AND SPENT NOTWITHSTANDING ANY LIMITATIONS PROVIDED BY LAW; AND ALLOCATING THE RESULTING TAX REVENUES TO A FUND TO BE DISTRIBUTED TO SCHOOL DISTRICTS AND THE CHARTER SCHOOL INSTITUTE FOR K-12 EDUCATION?

Text of Measure:

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

SECTION 1. In the constitution of the state of Colorado, **add** section 17 to article XVIII as follows:

Section 17. K-12 education fund. (1) THE K-12 EDUCATION FUND IS HEREBY ESTABLISHED TO IMPROVE THE EDUCATION OF CHILDREN IN COLORADO PUBLIC SCHOOLS BY PROVIDING ADDITIONAL REVENUE TO ADDRESS LOCAL NEEDS, INCLUDING REDUCING CLASS SIZES, ACQUIRING TECHNOLOGY FOR TEACHERS AND STUDENTS, ENHANCING SCHOOL SAFETY AND SECURITY, AND IMPROVING SCHOOL FACILITIES.

(2)(a) THE K-12 EDUCATION FUND CONSISTS OF THE MONEYS AS PROVIDED IN SUBSECTION (3) OF THIS SECTION. THE STATE TREASURER SHALL CREDIT TO THE K-12 EDUCATION FUND ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE K-12 EDUCATION FUND.

(b) THE STATE TREASURER SHALL ANNUALLY DISTRIBUTE THE MONEYS IN THE K-12 EDUCATION FUND ON A PER-PUPIL BASIS TO EACH SCHOOL DISTRICT AND THE STATE CHARTER SCHOOL INSTITUTE, OR SUCCESSOR AGENCY. THE PER-PUPIL AMOUNT IS DETERMINED BY DIVIDING THE TOTAL AMOUNT TO BE DISTRIBUTED BY THE STATEWIDE PUBLIC SCHOOL ENROLLMENT. THE AMOUNT DISTRIBUTED TO EACH SCHOOL DISTRICT IS THE PER-PUPIL AMOUNT MULTIPLIED BY THE SCHOOL DISTRICT'S PUPIL ENROLLMENT, AND THE AMOUNT DISTRIBUTED TO THE STATE CHARTER SCHOOL INSTITUTE, OR SUCCESSOR AGENCY, IS THE PER-PUPIL AMOUNT MULTIPLIED BY THE NUMBER OF PUPILS ENROLLED AT INSTITUTE CHARTER SCHOOLS.

(c) MONEYS DISTRIBUTED TO THE SCHOOL DISTRICTS AND THE STATE CHARTER SCHOOL INSTITUTE, OR SUCCESSOR AGENCY, UNDER THIS SUBSECTION (2) ARE IN ADDITION TO ANY OTHER MONEYS APPROPRIATED FOR DISTRIBUTION TO SCHOOL DISTRICTS OR THE CHARTER SCHOOL INSTITUTE OR OTHERWISE ALLOCATED TO SCHOOL DISTRICTS OR THE CHARTER SCHOOL INSTITUTE. NO SCHOOL DISTRICT OR INSTITUTE CHARTER SCHOOL IS REQUIRED TO USE MONEY DISTRIBUTED UNDER THIS SUBSECTION (2) AS A CONTRIBUTION TO ANY FUNDING FORMULA CONTAINED IN LAW.

(d) EACH SCHOOL DISTRICT AND EACH INSTITUTE CHARTER SCHOOL SHALL USE THE MONEYS RECEIVED FROM THE K-12 EDUCATION FUND TO IMPROVE THE EDUCATION OF CHILDREN IN COLORADO PUBLIC SCHOOLS BY ADDRESSING LOCAL NEEDS, INCLUDING REDUCING CLASS SIZES, ACQUIRING TECHNOLOGY FOR TEACHERS AND STUDENTS, ENHANCING SCHOOL SAFETY AND SECURITY, AND IMPROVING SCHOOL FACILITIES.

(e) THE STATE AUDITOR SHALL CONDUCT OR DIRECT A FINANCIAL AUDIT OF THE K-12 EDUCATION FUND AT LEAST ANNUALLY, AND SHALL SUBMIT A REPORT OF THE FINANCIAL AUDIT TO THE LEGISLATIVE AUDIT COMMITTEE.

(3)(a) NOTWITHSTANDING ANY OTHER LAW OR CONSTITUTIONAL PROVISIONS TO THE CONTRARY, THE COMMISSION SHALL EXPAND LIMITED GAMING IN THE STATE OF COLORADO BY IMPLEMENTING HORSE RACETRACK LIMITED GAMING, AS SET FORTH IN THIS SECTION.

(b) IN ORDER TO CONDUCT HORSE RACETRACK LIMITED GAMING, IN ADDITION TO ANY APPLICABLE LICENSE FEES, A HORSE RACETRACK LICENSED TO CONDUCT LIMITED GAMING MUST:

(I) WITHIN THE FIRST THIRTY DAYS OF OPERATING HORSE RACETRACK LIMITED GAMING, MAKE A SINGLE PAYMENT OF TWENTY-FIVE MILLION DOLLARS TO THE STATE TREASURER FOR DEPOSIT INTO THE K-12 EDUCATION FUND; AND

(II) BEGINNING WITH THE FIRST STATE FISCAL YEAR IN WHICH A HORSE RACETRACK THAT IS AUTHORIZED TO CONDUCT HORSE RACETRACK LIMITED GAMING GENERATES ADJUSTED GROSS PROCEEDS FROM HORSE RACETRACK LIMITED GAMING, PAY TO THE STATE TREASURER THIRTY-FOUR PERCENT OF THE HORSE RACETRACK'S ADJUSTED GROSS PROCEEDS OF HORSE RACETRACK LIMITED GAMING GENERATED EACH YEAR FOR DEPOSIT INTO THE K-12 EDUCATION FUND.

(c) EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS SECTION, HORSE RACETRACKS SHALL RETAIN THE BALANCE OF THEIR ADJUSTED GROSS PROCEEDS FROM HORSE RACETRACK LIMITED GAMING NOT PAID PURSUANT TO THIS SUBSECTION (3).

(d) ALL MONEYS IN THE K-12 EDUCATION FUND SHALL BE SET ASIDE, ALLOCATED, ALLOTTED, AND CONTINUOUSLY APPROPRIATED FOR DISTRIBUTION IN ACCORDANCE WITH THIS SECTION.

(4) A HOST COMMUNITY MAY IMPOSE ON A HORSE RACETRACK LICENSED TO CONDUCT LIMITED GAMING IN THE HOST COMMUNITY A ONE-TIME INITIAL IMPACT FEE AND ANNUAL IMPACT FEES THAT ARE REASONABLY RELATED TO THE HOST COMMUNITY'S COSTS RESULTING FROM HORSE RACETRACK LIMITED GAMING. THE AMOUNT OF THE IMPACT FEES WILL BE ESTABLISHED THROUGH NEGOTIATIONS BETWEEN A HORSE RACETRACK AND THE HOST COMMUNITY.

(5) STATE AND LOCAL GOVERNMENTS SHALL COLLECT, DISTRIBUTE, AND SPEND ALL REVENUES DERIVED PURSUANT TO THIS SECTION AS VOTER-APPROVED REVENUE CHANGES WITHOUT REGARD TO ANY LIMITATION CONTAINED IN SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION OR ANY OTHER LAW.

(6) THE ADMINISTRATION AND REGULATION OF THIS SECTION ARE SUBJECT TO THE AUTHORITY OF THE COMMISSION. NO LATER THAN JULY 1, 2015, THE COMMISSION SHALL PROMULGATE ALL NECESSARY RULES TO

REGULATE HORSE RACETRACK LIMITED GAMING IN ACCORDANCE WITH THIS SECTION AND WITH GENERALLY ACCEPTED INDUSTRY STANDARDS. THE RULES MUST MAXIMIZE THE PROCEEDS AVAILABLE FOR DISTRIBUTION UNDER THIS SECTION TO THE K-12 EDUCATION FUND FOR THE FISCAL YEAR COMMENCING ON JULY 1, 2015, AND EACH SUCCEEDING FISCAL YEAR THEREAFTER. THE COMMISSION SHALL NOT UNREASONABLY WITHHOLD A LICENSE, AND SHALL NOT IMPOSE LICENSE REQUIREMENTS FOR HORSE RACETRACK LIMITED GAMING THAT ARE STRICTER THAN THOSE IMPLEMENTED FOR LIMITED GAMING LICENSES UNDER SECTION 9 OF THIS ARTICLE.

(7) HORSE RACETRACK LIMITED GAMING IS SUBJECT TO THE FOLLOWING:

(a) HORSE RACETRACK LIMITED GAMING MAY TAKE PLACE ONLY IN THE COUNTIES OF ARAPAHOE, MESA, AND PUEBLO. ONLY ONE HORSE RACETRACK IN EACH OF THE SPECIFIED THREE COUNTIES MAY BE LICENSED TO CONDUCT HORSE RACETRACK LIMITED GAMING.

(b) HORSE RACETRACKS LICENSED TO CONDUCT HORSE RACETRACK LIMITED GAMING ARE AUTHORIZED TO HAVE THE GREATER OF TWO THOUSAND FIVE HUNDRED SLOT MACHINES OR SUCH OTHER NUMBER OF SLOT MACHINES AS REQUESTED BY THE HORSE RACETRACK AND AS DETERMINED BY THE COMMISSION TO MAXIMIZE REVENUE TO THE K-12 EDUCATION FUND.

(c) HORSE RACETRACK LIMITED GAMING IS RESTRICTED TO PERSONS TWENTY-ONE YEARS OF AGE OR OLDER.

(d) HORSE RACETRACK LIMITED GAMING OPERATIONS ARE PROHIBITED BETWEEN THE HOURS OF 2 A.M. AND 8 A.M., UNLESS THE HOURS ARE EXPANDED BY THE HOST COMMUNITY OF A HORSE RACETRACK. EACH HOST COMMUNITY IN WHICH HORSE RACETRACK LIMITED GAMING OCCURS IS AUTHORIZED TO EXTEND THE HOURS OF HORSE RACETRACK LIMITED GAMING OPERATION UP TO TWENTY-FOUR HOURS PER DAY, SEVEN DAYS PER WEEK.

(e) ALCOHOLIC BEVERAGES MAY, SUBJECT TO LICENSURE BY THE STATE AND LOCAL LIQUOR LICENSING AUTHORITIES, BE SOLD AT HORSE RACETRACKS IN WHICH HORSE RACETRACK LIMITED GAMING TAKES PLACE.

(8) EACH HORSE RACETRACK LICENSED TO CONDUCT LIMITED GAMING SHALL KEEP A COMPLETE AND ACCURATE SET OF BOOKS AND RECORDS, AND COMPLY WITH THE SAME INSPECTION, EXAMINATION, AND AUDIT REQUIREMENTS APPLICABLE TO LIMITED GAMING LICENSEES UNDER SECTION 9 OF THIS ARTICLE AS PRESCRIBED IN SECTION 12-47.1-529, COLORADO REVISED STATUTES, OR SUCCESSOR STATUTE.

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

(a) "ADJUSTED GROSS PROCEEDS" MEANS THE DEFINITION OF ADJUSTED GROSS PROCEEDS IN SECTION 9 OF THIS ARTICLE, AS IT IS APPLIED TO LIMITED GAMING ESTABLISHMENTS LICENSED UNDER SECTION 9 OF THIS ARTICLE IN CALCULATING THE PAYMENTS OWED BY THE LICENSEES FOR THE RIGHT TO CONDUCT LIMITED GAMING.

(b) "COMMISSION" MEANS THE COLORADO LIMITED GAMING CONTROL COMMISSION, AS DESCRIBED IN SUBSECTION (2) OF SECTION 9 OF THIS ARTICLE.

(c) "HORSE RACETRACK" MEANS A LICENSED CLASS B HORSE RACETRACK THAT HAS BEEN CONTINUOUSLY OPERATED AND THAT THE COLORADO RACING COMMISSION, OR SUCCESSOR AGENCY, HAS LICENSED AS A CLASS B HORSE RACETRACK, TO CONDUCT LIVE RACE MEETS IN THE STATE OF COLORADO AND TO CONDUCT PARI-MUTUEL WAGERING ON HORSE RACES, FOR A PERIOD OF NO LESS THAN FIVE YEARS AS OF JANUARY 1, 2014, OR FOR FIVE YEARS IMMEDIATELY PRECEDING THE CLASS B HORSE RACETRACK'S APPLICATION FOR A LICENSE TO CONDUCT HORSE RACETRACK LIMITED GAMING.

(d) "HORSE RACETRACK LIMITED GAMING" MEANS THE SAME LIMITED GAMING THAT CAN BE CONDUCTED BY LIMITED GAMING LICENSEES UNDER SECTION 9 OF THIS ARTICLE, BUT, AT A MINIMUM, INCLUDES THE USE AT THE HORSE RACETRACK OF SLOT MACHINES, THE CARD GAMES OF BLACKJACK AND POKER, AND THE GAMES OF ROULETTE AND CRAPS, EACH GAME HAVING UP TO A MAXIMUM SINGLE BET OF ONE HUNDRED DOLLARS. ALL WAGERS ON GAMES MUST BE PLACED IN PERSON ON THE LICENSED PREMISE OF A HORSE RACETRACK'S PHYSICAL PLACE OF BUSINESS.

(e) "HOST COMMUNITY" MEANS THE SINGLE LOCAL JURISDICTION THAT ISSUES THE PERMITS AND APPROVALS NECESSARY FOR THE OPERATIONS OF A HORSE RACETRACK CONDUCTING HORSE RACETRACK LIMITED GAMING.

(f) "SLOT MACHINE" MEANS ANY MECHANICAL, ELECTRICAL, VIDEO, ELECTRONIC, OR OTHER DEVICE, CONTRIVANCE, OR MACHINE THAT, AFTER INSERTION OF CASH IN THE FORM OF A COIN OR BILL; A TOKEN OR SIMILAR OBJECT; OR UPON PAYMENT BY ANY MEDIUM, INCLUDING ELECTRONIC CREDITS, OF ANY REQUIRED CONSIDERATION BY A PLAYER, IS AVAILABLE TO BE PLAYED OR OPERATED, AND THAT, WHETHER BY REASON OF THE SKILL OF THE PLAYER OR APPLICATION OF THE ELEMENT OF CHANCE, OR BOTH, MAY

DELIVER OR ENTITLE THE PLAYER OPERATING THE MACHINE TO RECEIVE CASH PRIZES, MERCHANDISE, TOKENS REDEEMABLE FOR CASH, GAME CREDITS IN ELECTRONIC FORM OR OTHERWISE REDEEMABLE FOR CASH, OR ANY OTHER THING OF VALUE OTHER THAN UNREDEEMABLE FREE GAMES, WHETHER THE PAYOFF IS MADE AUTOMATICALLY FROM THE MACHINES OR IN ANY OTHER MANNER.

(10) IF ANY PROVISION OF THIS SECTION IS HELD INVALID, THE REMAINDER OF THIS SECTION REMAINS UNIMPAIRED.

Proposition 104
School Board Meeting Requirements

ANALYSIS

Proposition 104 proposes amending the Colorado statutes to:

- require that local school boards or their representatives negotiate collective bargaining agreements in open meetings.

Summary and Analysis

Colorado open meetings law. Any meeting at which a state or local governmental body discusses public business or takes formal action must be open to the public, with certain exceptions. For example, if a governmental body is meeting to discuss issues such as personnel matters, security details, or real estate transactions, a closed meeting known as an executive session may be called. Governmental bodies may also go into executive session to determine positions on matters subject to negotiations, to develop negotiation strategy, and to instruct negotiators. A vote of two-thirds of the members present is required to enter executive session, and the topics to be discussed must be disclosed. Any final action on matters discussed in executive session must be taken in public.

Collective bargaining and local governments. Collective bargaining is the process of negotiating terms of employment between an employer and a group of employees or employee representatives. Many local governments have collective bargaining agreements with public employees such as firefighters, police officers, and public school personnel to determine pay, benefits, and working conditions. Collective bargaining agreements between school boards and school employees address a variety of other terms and conditions such as curriculum, instructional materials, and class size.

Under current law, the governing body of a local government may designate an employee or representative to negotiate a collective bargaining agreement, and there is no requirement that these negotiations take place in public. While a representative of a local school board may negotiate collective bargaining agreements in private, any final collective bargaining agreement must be voted on by the school board in a public meeting and posted on the Internet.

Approximately one-quarter of Colorado's school districts, accounting for about three-quarters of the state's public school students, have collective bargaining agreements.

Changes proposed by Proposition 104. Under this measure, school boards or their representatives are required to negotiate collective bargaining agreements in meetings that are open to the public. It is unclear whether the measure requires school boards to discuss their negotiation strategies in public. Proposition 104 only applies to school districts and does not impact how other public bodies negotiate collective bargaining agreements.

For information on those issue committees that support or oppose the measures on the ballot at the November 4, 2014, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html

Argument For

1) Open meetings and transparency are basic principles of good government. This measure upholds the public's right to be informed and provides additional public oversight of government spending. Current law requires that school districts post completed collective bargaining agreements online; however, negotiations to arrive at these agreements are largely held in private meetings. Holding collective bargaining negotiations in a public forum allows for greater understanding by the public and school employees of these proceedings.

Argument Against

1) Voters elect local school board members to determine what is best for the school district, and this measure removes the board's freedom and flexibility to choose how to negotiate with employees. Currently, school boards are allowed to discuss collective bargaining agreements in public, and some choose to do so. Negotiations over labor contracts can be difficult, complicated, and may include sensitive employment issues. If school boards are required to have these discussions in public, they may be at a disadvantage during the negotiations, making it harder to reach a final agreement.

Estimate of Fiscal Impact

Requiring school boards to modify negotiation practices related to collective bargaining agreements may increase local school districts' administrative workloads. The proposition applies to school districts and will not affect state spending or revenue.

Proposition 104
School Board Meeting Requirements

BALLOT TITLE AND TEXT

The ballot title below is a summary drafted by the professional staff of the offices of the secretary of state, the attorney general, and the legal staff for the general assembly for ballot purposes only. The ballot title will not appear in the Colorado Revised Statutes. The text of the measure that will appear in the Colorado Revised Statutes below was drafted by the proponents of the initiative. The initiated measure is included on the ballot as a proposed change to current law because the proponents gathered the required amount of petition signatures.

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

Text of Measure:

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

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

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

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

(II) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), IN ORDER TO ASSURE SCHOOL BOARD TRANSPARENCY "LOCAL PUBLIC BODY" SHALL INCLUDE MEMBERS OF A BOARD OF EDUCATION,

SCHOOL ADMINISTRATION PERSONNEL, OR A COMBINATION THEREOF WHO ARE INVOLVED IN A MEETING WITH A REPRESENTATIVE OF EMPLOYEES AT WHICH A COLLECTIVE BARGAINING AGREEMENT IS DISCUSSED.

(4) The members of a local public body subject to this part 4, upon the announcement by the local public body to the public of the topic for discussion in the executive session, including specific citation to the provision of this subsection (4) authorizing the body to meet in an executive session and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized, and the affirmative vote of two-thirds of the quorum present, after such announcement, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the following matters; except that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action, except the review, approval, and amendment of the minutes of an executive session recorded pursuant to subparagraph (II) of paragraph (d.5) of subsection (2) of this section, shall occur at any executive session that is not open to the public:

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

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

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

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

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

22-32-109.4. "**Colorado School Collective Bargaining Agreement Sunshine Act**" **- board of education - specific duties.** (4) ANY MEETING OF A BOARD OF EDUCATION AT WHICH A COLLECTIVE BARGAINING AGREEMENT IS DISCUSSED SHALL BE OPEN TO THE PUBLIC AND ANY NOTICE REQUIRED BY SECTION 24-6-402 (2)(c), C.R.S., SHALL BE GIVEN PRIOR TO THE MEETING.

Proposition 105
Labeling Genetically Modified Food

ANALYSIS

Proposition 105 proposes amending the Colorado statutes to:

- require foods that are genetically modified or produced with genetic engineering to include the words "Produced With Genetic Engineering" on the label or container, with certain exceptions;

- apply existing food mislabeling penalties in state law to a food manufacturer, distributor, or retailer for failing to comply with the labeling requirements;

- prohibit a person from bringing legal action against a manufacturer, distributor, or retailer for failing to comply with the labeling requirements; and

- require the Colorado Department of Public Health and Environment to develop regulations and oversee the labeling requirements.

Summary and Analysis

Background. Genetic engineering refers to specific scientific processes that alter the characteristics of organisms at the molecular or cellular level. In agriculture, genetic engineering is generally used to increase the herbicidal tolerance or pest resistance of plants. Genetic engineering was first accomplished in 1973, and became commercialized in 1976. According to the U.S. Food and Drug Administration (FDA), genetically engineered foods, also called genetically modified organisms or GMOs, have been in the food supply since the 1990s. According to the U.S. Department of Agriculture (USDA), in 2013, 90 percent of corn, 90 percent of cotton, and 93 percent of soybean crops planted in the United States were genetically engineered. Currently, no genetically engineered animals are FDA-approved for human consumption, although animal feed may contain genetically engineered material.

Existing labeling of genetically engineered foods. FDA rules state that genetically engineered foods and food ingredients must meet the same safety requirements as other foods. The FDA allows food producers to voluntarily label their products as to whether or not they contain genetically engineered material, and has issued draft guidance on this labeling to the food industry.

The USDA certifies organic foods under the National Organic Program, which can then be labeled as "USDA Organic." Crops grown with the use of genetic engineering cannot be certified as organic under the USDA program.

A number of retailers currently sell foods identified as not containing genetically engineered material that have been verified by a third-party verification organization. One such organization currently lists about 16,000 individual food products as having passed its verification process. These products are labeled as "Non-GMO Project Verified."

***Proposed labeling requirements*.** Beginning July 1, 2016, Proposition 105 requires that certain foods sold in Colorado — that are genetically modified or produced with genetic engineering — be labeled "Produced With Genetic Engineering" in a clear and conspicuous manner. For packaged foods that are produced with genetic engineering, the words must be included on the label. Unpackaged raw food products, such as fresh fruits and vegetables and unprocessed grains and nuts, produced with genetic engineering must be identified with the same wording on the container, bin, or shelf where the foods are displayed for sale by a retailer.

Foods covered by the measure. "Genetically engineered" is defined in the measure as food produced from an organism that has had its genetics scientifically altered. A food is also considered genetically engineered if the organism from which the food is made has been treated with a genetically engineered material or contains an ingredient, component, or other substance that is genetically engineered.

These foods are exempt from the measure:

- food or drink for animals;
- chewing gum;
- alcoholic beverages;
- foods, such as cheese, that would only be considered genetically engineered because a genetically engineered material was used as a processing aid;

- prepared foods intended for immediate human consumption;
- foods sold in a restaurant;
- foods derived entirely from an animal, such as milk, meat, or pure honey, regardless of the animal's diet or medications, unless the animal itself has been genetically engineered; and
- medically prescribed foods.

Penalties for violations. A manufacturer, distributor, or retailer that fails to properly label foods that have been produced with genetic engineering commits a violation under the Colorado Food and Drug Act. The penalty for a violation is a fine of not more than $1,000, six months imprisonment in a county jail, or both. Subsequent violations are punishable by a fine of up to $2,000, one year in a county jail, or both. Proposition 105 prohibits a person from suing a manufacturer, distributor, or retailer for not properly labeling foods produced with genetic engineering.

Proposition 105 exempts from penalties a person who:

- grows, raises, or produces food without knowing that the food or seed had been genetically engineered; and

- obtains a sworn statement from the seller that the seed or food was not knowingly created with genetic engineering.

Regulation by the state. Proposition 105 requires the Colorado Department of Public Health and Environment to establish regulations for labeling foods that have been genetically modified or produced with genetic engineering. These regulations may include procedures for the inspection of manufacturers and testing of food products to ensure compliance with the measure's labeling requirements.

For information on those issue committees that support or oppose the measures on the ballot at the November 4, 2014, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

http://ww.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html

Arguments For

1) The labeling of genetically engineered foods will increase the availability of information about Colorado's food supply. Current labeling requirements for packaged foods identify ingredients, nutritional values, and either the presence of allergens in the food, or the existence of allergens in the manufacturing facility. The measure's labeling requirements give Colorado consumers additional information to consider when making their food purchasing decisions. The issue is not whether foods produced with genetic engineering are good or bad, rather that many consumers want to have the option to choose based on their personal needs and values. In the absence of federal action, Proposition 105 can help Colorado citizens make informed food choices by requiring labeling of foods produced with genetic engineering.

2) Over 60 countries, including all members of the European Union, have laws or regulations mandating the labeling of genetically engineered foods. Additionally, a small number of states have passed but not yet implemented laws requiring the labeling of genetically engineered foods. The FDA's current voluntary labeling guidelines are not widely used, do not provide enough information, and may never be made mandatory by the federal government. Third party non-GMO and USDA organic labeling account for only a small fraction of consumers' food choices in Colorado, so they are not a substitute for mandatory labeling.

Arguments Against

1) Proposition 105 will result in higher food prices as farmers, food manufacturers, distributors, and retailers pass their costs to comply with the labeling requirements on to consumers. Such businesses will have increased costs for record-keeping, product verification, and separate product storage and handling processes for genetically engineered products. The labeling requirement may be particularly burdensome for small businesses and farmers' markets, since the measure does not provide for any exemptions based on an operation's size.

2) The measure conflicts with existing nationwide voluntary labeling standards that already provide consumers with accurate and reliable information on non-genetically engineered and organic foods. Because of the large number of labeling exemptions included in the measure — most notably food served in restaurants and meat and dairy products regardless of the animal's diet and medications — the proposed labeling requirements would not give consumers a reliable way of knowing which foods contain genetically engineered ingredients, and which do not. These exempted foods will appear as products that were not produced with genetic engineering, which may mislead rather than inform consumers. Requiring the labeling of foods produced with genetic engineering may also send the message to consumers that the foods are unsafe, even though no scientific evidence indicates that genetically engineered foods are any riskier than other foods.

Estimate of Fiscal Impact

***State revenue*.** Passage of Proposition 105 may result in an increase in revenue from fines. A manufacturer, distributor, or retailer that fails to properly label foods that have been produced with genetic engineering commits a violation under the Colorado Food and Drug Act. The penalty for a violation is a fine of not more than $1,000, six months imprisonment in a county jail, or both. Subsequent violations are punishable by a fine of up to $2,000, one year in a county jail, or both. In the past five years, one person has been found guilty of mislabeling a food, drug, device, or cosmetic product, so this proposition is not expected to create a significant increase in fine collections from violations.

State spending. The Colorado Department of Public Health and Environment will develop rules for the regulation of the labeling requirements through a stakeholder process and hire staff to handle complaints, perform inspections, gather samples, and test food. The department will also be required to update its computer software to track complaints and food inspections. The frequency of inspections, sampling, and testing will depend on the rules established by the department; however, it is expected that the department will test at least 30 samples annually. The department is expected to hire up to two additional staff to implement the proposition.

Staffing, rulemaking, and computer software updates are expected to cost about $113,000 in the first year of implementation. Once the rules are in place, staffing, computer software maintenance, and food sampling and testing are estimated to cost $130,000 annually. Proposition 105 does not identify a funding source to implement the measure's requirements, so it is assumed state General Fund will be used.

Proposition 105
Labeling Genetically Modified Food

BALLOT TITLE AND TEXT

The ballot title below is a summary drafted by the professional staff of the offices of the secretary of state, the attorney general, and the legal staff for the general assembly for ballot purposes only. The ballot title will not appear in the Colorado Revised Statutes. The text of the measure that will appear in the Colorado Revised Statutes below was drafted by the proponents of the initiative. The initiated measure is included on the ballot as a proposed change to current law because the proponents gathered the required amount of petition signatures.

Ballot Title: Shall there be a change to the Colorado Revised Statutes concerning labeling of genetically modified food; and, in connection therewith, requiring food that has been genetically modified or treated with genetically modified material to be labeled, "Produced With Genetic Engineering" starting on July 1, 2016; exempting some foods including but not limited to food from animals that are not genetically modified but have been fed or injected with genetically modified food or drugs, certain food that is not packaged for retail sale and is intended for immediate human consumption, alcoholic beverages, food for animals, and medically prescribed food; requiring the Colorado department of public health and environment to regulate the labeling of genetically modified food; and specifying that no private right of action is created for failure to conform to the labeling requirements?

Text of Measure:

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

SECTION 1. In Colorado Revised Statutes, **add** 25-5-401.5 as follows:

25-5-401.5. Legislative declaration. (1) THE ELECTORATE OF COLORADO HEREBY FINDS, DETERMINES, AND DECLARES THAT:

(1) LABELING OF GENETICALLY MODIFIED FOOD IS INTENDED TO PROVIDE CONSUMERS WITH THE OPPORTUNITY TO MAKE AN INFORMED CHOICE OF THE PRODUCTS THEY CONSUME AND TO PROTECT THE PUBLIC'S HEALTH, SAFETY AND WELFARE;

(2) PERSONS WITH CERTAIN RELIGIOUS, CULTURAL AND MORAL BELIEFS OBJECT TO CONSUMING GENETICALLY MODIFIED FOOD BECAUSE OF OBJECTIONS TO TAMPERING WITH THE GENETIC MAKEUP OF LIFE FORMS AND THE RAPID INTRODUCTION AND PROLIFERATION OF GENETICALLY ENGINEERED ORGANISMS;

(3) U.S. FEDERAL LAW DOES NOT PROVIDE FOR THE REGULATION OF THE SAFETY AND LABELING OF GENETICALLY MODIFIED FOOD;

(4) THE LONG TERM HEALTH, SAFETY AND ENVIRONMENTAL CONSEQUENCES OF GROWING AND CONSUMING GENETICALLY MODIFIED FOOD ARE NOT YET FULLY RESEARCHED AND ARE NOT YET WELL UNDERSTOOD BY SCIENCE;

(5) CONSUMERS HAVE A RIGHT TO KNOW IF THE FOOD THEY ARE CONSUMING HAS BEEN GENETICALLY MODIFIED OR HAS BEEN PRODUCED WITH GENETIC ENGINEERING.

SECTION 2. In Colorado Revised Statutes, 25-5-402, **add** (8.5), (9.5), (12.5), (15.5), (16.5), (20.3), (20.5), and (21.5) as follows:

25-5-402. Definitions. As used in this part 4, unless the context otherwise requires:

(8.5) "DISTRIBUTOR" MEANS A PERSON OR BUSINESS ENGAGED IN ANY METHOD OF DISTRIBUTING OR TRANSPORTING A FOOD OR FOOD PRODUCT FROM ONE PLACE TO ANOTHER.

(9.5) "ENZYME" MEANS A PROTEIN THAT CATALYZES CHEMICAL REACTIONS OF OTHER SUBSTANCES WITHOUT BEING DESTROYED OR ALTERED UPON COMPLETION OF SUCH REACTIONS.

(12.5) "GENETICALLY ENGINEERED" OR "GENETICALLY MODIFIED" MEANS FOOD PRODUCED FROM OR WITH AN ORGANISM OR ORGANISMS WITH ITS GENETICS ALTERED THROUGH APPLICATION OF:

(a) IN VITRO AND IN VIVO NUCLEIC ACID TECHNIQUES, INCLUDING RECOMBITANT DEOXYRIBONUCLEIC ACID (DNA) TECHNIQUES AND THE DIRECT INJECTION OF NUCLEIC ACID INTO CELLS OR ORGANELLES; OR

(b) METHODS OF FUSING CELLS BEYOND THE TAXONOMIC FAMILY THAT OVERCOME NATURAL PHYSIOLOGICAL REPRODUCTIVE OR RECOMBINANT BARRIERS, AND THAT ARE NOT TECHNIQUES USED IN TRADITIONAL BREEDING AND SELECTION SUCH AS CONJUGATION, TRANSDUCTION, AND HYBRIDIZATION.

(C) A FOOD SHALL OTHERWISE BE CONSIDERED TO BE GENETICALLY ENGINEERED IF:

(I) THE ORGANISM FROM WHICH THE FOOD IS DERIVED HAS BEEN TREATED WITH A GENETICALLY ENGINEERED MATERIAL; EXCEPT THAT THE USE OF MANURE AS A FERTILIZER FOR RAW AGRICULTURAL COMMODITIES MAY NOT BE CONSTRUED TO MEAN THAT SUCH COMMODITIES ARE PRODUCED WITH A GENETICALLY ENGINEERED MATERIAL; OR

(II) THE FOOD CONTAINS AN INGREDIENT, COMPONENT, OR OTHER ARTICLE THAT IS GENETICALLY ENGINEERED.

(15.5) "MANUFACTURER" MEANS A PERSON OR BUSINESS ENGAGED IN THE PRODUCTION OR PROCESSING OF SEED, SEED STOCK, FOOD, OR ANY FOOD PRODUCT.

(16.5) "ORGANISM" MEANS ANY BIOLOGICAL ENTITY CAPABLE OF REPLICATION, REPRODUCTION OR TRANSFERRING GENETIC MATERIAL.

(20.3) "PROCESSED FOOD" MEANS ANY FOOD OTHER THAN A RAW AGRICULTURAL COMMODITY AND INCLUDES ANY FOOD PRODUCED FROM A RAW AGRICULTURAL COMMODITY THAT HAS BEEN SUBJECT TO PROCESSING SUCH AS CANNING, SMOKING, PRESSING, COOKING, FREEZING, DEHYDRATION, FERMENTATION, OR MILLING.

(20.5) "PROCESSING AID" MEANS:

(a) A SUBSTANCE THAT IS ADDED TO A FOOD DURING THE PROCESSING OF THE FOOD BUT IS REMOVED IN SOME MANNER FROM THE FOOD BEFORE IT IS PACKAGED IN ITS FINAL FORM;

(b) A SUBSTANCE THAT IS ADDED TO A FOOD DURING PROCESSING, IS CONVERTED INTO CONSTITUENTS NORMALLY PRESENT IN THE FOOD, AND DOES NOT SIGNIFICANTLY INCREASE THE AMOUNT OF THE CONSTITUENTS FOUND IN THE FOOD; OR

(c) A SUBSTANCE THAT IS ADDED TO A FOOD FOR ITS TECHNICAL OR FUNCTIONAL EFFECTS IN THE PROCESSING BUT IS PRESENT IN THE FINISHED FOOD AT INSIGNIFICANT LEVELS AND DOES NOT HAVE ANY TECHNICAL OR FUNCTIONAL EFFECT IN THAT FINISHED FOOD.

(21.5) "RETAILER" MEANS A PERSON OR BUSINESS ENGAGED IN SELLING THE FOOD FROM INDIVIDUALS OR BUSINESSES TO THE END-USER.

SECTION 3. In Colorado Revised Statutes, 25-5-411, **add** (1)(q), (1)(r), (3) and (4) as follows:

25-5-411. Definitions of "misbranding". (1) A food shall be deemed to be misbranded:

(q) BEGINNING JULY 1, 2016, IF IT HAS BEEN GENETICALLY MODIFIED OR HAS BEEN PRODUCED WITH GENETIC ENGINEERING, UNLESS THE WORDS "PRODUCED WITH GENETIC ENGINEERING" APPEAR IN A CLEAR AND CONSPICUOUS MANNER ON ITS LABEL, IN THE CASE OF PACKAGED FOOD. IN THE CASE OF A RAW AGRICULTURAL COMMODITY THAT IS NOT SEPARATELY PACKAGED OR LABELED, THE WORDS "PRODUCED WITH GENETIC ENGINEERING" SHALL BE PLACED IN A CLEAR AND CONSPICUOUS MANNER ON THE CONTAINER USED FOR PACKAGING, HOLDING OR TRANSPORT BY THE MANUFACTURER, AND SHALL BE MAINTAINED BY THE DISTRIBUTOR, AND DISPLAYED IN A CLEAR AND CONSPICUOUS MANNER ON THE RETAIL STORE SHELF OR BIN IN WHICH SUCH COMMODITY IS DISPLAYED FOR SALE BY THE RETAILER. THIS PARAGRAPH (q) OF SUBSECTION (1) OF THIS SECTION DOES NOT APPLY TO:

(I) FOOD OR DRINK FOR ANIMALS;

(II) CHEWING GUM;

(III) ALCOHOLIC BEVERAGES;

(IV) ANY PROCESSED FOOD THAT WOULD BE SUBJECT TO SUBSECTION (q) SOLELY BECAUSE ONE OR MORE PROCESSING AIDS OR ENZYMES WERE PRODUCED OR DERIVED WITH GENETIC ENGINEERING;

(V) ANY FOOD WHICH IS NOT PACKAGED FOR RETAIL SALE AND THAT EITHER:

(a) IS A PROCESSED FOOD PREPARED AND INTENDED FOR IMMEDIATE HUMAN CONSUMPTION;

(b) IS SERVED, SOLD, OR OTHERWISE PROVIDED IN ANY RESTAURANT OR OTHER FOOD ESTABLISHMENT THAT IS PRIMARILY ENGAGED IN THE SALE OF FOOD PREPARED AND INTENDED FOR IMMEDIATE HUMAN CONSUMPTION;

(VI) FOOD CONSISTING ENTIRELY OF, OR DERIVED ENTIRELY FROM, AN ANIMAL THAT HAS NOT ITSELF BEEN GENETICALLY ENGINEERED, REGARDLESS OF WHETHER THE ANIMAL HAS BEEN FED OR INJECTED WITH ANY FOOD PRODUCED WITH GENETIC ENGINEERING OR ANY DRUG THAT HAS BEEN PRODUCED THROUGH MEANS OF GENETIC ENGINEERING; OR

(VII) MEDICALLY PRESCRIBED FOOD.

(3) FOOD WILL NOT BE CONSIDERED MISBRANDED UNDER PARAGRAPH (q) OF SUBSECTION (1) OF THIS SECTION IF IT IS PRODUCED BY A PERSON WHO:

(a) GROWS, RAISES, OR OTHERWISE PRODUCES SUCH FOOD WITHOUT KNOWLEDGE THAT THE FOOD WAS CREATED WITH SEED OR OTHER FOOD THAT WAS DERIVED IN ANY WAY THROUGH A PROCESS OF GENETIC ENGINEERING; AND

(b) OBTAINS A SWORN STATEMENT FROM THE PARTY THAT SOLD TO SUCH PERSON THE SEED OR FOOD THAT SUCH SUBSTANCE HAS NOT BEEN KNOWINGLY ENGINEERED, WAS ENTIRELY SEGREGATED FROM, AND HAS NOT KNOWINGLY BEEN COMMINGLED WITH A FOOD OR FOOD COMPONENT THAT MAY HAVE BEEN CREATED THROUGH A PROCESS OF GENETIC ENGINEERING. THE SWORN STATEMENT MUST BE OBTAINED AT THE TIME THE SEED OR FOOD IS DELIVERED FROM THE SELLER.

(4) THERE IS NO PRIVATE RIGHT OF ACTION AGAINST A DISTRIBUTOR, MANUFACTURER, OR RETAILER THAT SELLS OR ADVERTISES FOOD FOR FAILURE TO CONFORM TO THE LABELING REQUIREMENTS UNDER PARAGRAPH (q) OF SUBSECTION (1) OF THIS SECTION.

(5) THE DEPARTMENT SHALL PROMULGATE REGULATIONS IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 25-5-420 CONCERNING THE PROCEDURES FOR PROMULGATING SUCH REGULATIONS, TO CARRY OUT THE LABELING REQUIREMENTS OF PARAGRAPH (q) OF SUBSECTION (1) OF THIS SECTION. SUCH REGULATIONS MAY PRESCRIBE THE PROCEDURES FOR INSPECTIONS AND TESTING OF PRODUCTS TO ENSURE COMPLIANCE WITH PARAGRAPH (q) OF SUBSECTION (1) OF THIS SECTION.

To access individual election offices, select the county name.

LOCAL ELECTION OFFICES

Adams	4430 South Adams County Parkway, Suite E3102 Brighton, CO 80601-8207	(720) 523-6500
Alamosa	402 Edison Ave., Alamosa, CO 81101	(719) 589-6681
Arapahoe	5334 S. Prince St., Littleton, CO 80120	(303) 795-4511
Archuleta	449 San Juan, Pagosa Springs, CO 81147	(970) 264-8331
Baca	741 Main St., Suite 3, Springfield, CO 81073	(719) 523-4372
Bent	725 Bent Ave., Las Animas, CO 81054	(719) 456-2009
Boulder	1750 33rd St. #200, Boulder, CO 80301	(303) 413-7740
Broomfield	1 DesCombes Drive, Broomfield, CO 80020	(303) 464-5857
Chaffee	104 Crestone Ave., Salida, CO 81201	(719) 539-4004
Cheyenne	51 S. 1st St., Cheyenne Wells, CO 80810	(719) 767-5685
Clear Creek	405 Argentine St., Georgetown, CO 80444	(303) 679-2339
Conejos	6683 County Road 13, Antonito, CO 81129	(719) 376-5422
Costilla	400 Gasper St., San Luis, CO 81152	(719) 937-7671
Crowley	631 Main St., Suite 102, Ordway, CO 81063	(719) 267-5225
Custer	205 S. 6th St., Westcliffe, CO 81252	(719) 783-2441
Delta	501 Palmer #211, Delta, CO 81416	(970) 874-2150
Denver	200 W. 14th Ave., Suite 100, Denver, CO 80204	(720) 913-8683
Dolores	409 N. Main St., Dove Creek, CO 81324	(970) 677-2381
Douglas	125 Stephanie Pl., Castle Rock, CO 80109	(303) 660-7444
Eagle	500 Broadway, Eagle, CO 81631	(970) 328-8726
Elbert	215 Comanche St., Kiowa, CO 80117	(303) 621-3127
El Paso	1675 W. Garden of the Gods Rd., Suite 2202 Colorado Springs, CO 80907	(719) 575-8683
Fremont	615 Macon Ave. #102, Canon City, CO 81212	(719) 276-7340
Garfield	109 Eighth St. #200, Glenwood Spgs, CO 81601	(970) 384-3700 ext. 2
Gilpin	203 Eureka St., Central City, CO 80427	(303) 582-5321
Grand	308 Byers Ave., Hot Sulphur Springs, CO 80451	(970) 725-3065
Gunnison	221 N. Wisconsin, Suite C, Gunnison, CO 81230	(970) 641-7927
Hinsdale	317 N. Henson St., Lake City, CO 81235	(970) 944-2228
Huerfano	401 Main St., Suite 204, Walsenburg, CO 81089	(719) 738-2380 ext. 3
Jackson	396 La Fever St., Walden, CO 80480	(970) 723-4334
Jefferson	3500 Illinois St., Suite #1100, Golden, CO 80401	(303) 271-8111
Kiowa	1305 Goff St., Eads, CO 81036	(719) 438-5421

Kit Carson	251 16th St., Burlington, CO 80807	(719) 346-8638 ext. 301
Lake	505 Harrison Ave., Leadville, CO 80461	(719) 486-1410
La Plata	98 Everett St., Suite C, Durango, CO 81303	(970) 382-6296
Larimer	200 W. Oak St., Ft. Collins, CO 80522	(970) 498-7820
Las Animas	200 E. First St., Room 205, Trinidad, CO 81082	(719) 846-3314
Lincoln	103 Third Ave., Hugo, CO 80821	(719) 743-2444
Logan	315 Main St., Suite 3, Sterling, CO 80751	(970) 522-1544
Mesa	200 S. Spruce St., Grand Junction, CO 81501	(970) 244-1662
Mineral	1201 N. Main St., Creede, CO 81130	(719) 658-2440
Moffat	221 W. Victory Way #200, Craig, CO 81625	(970) 824-9120
Montezuma	140 W. Main St., Suite #1, Cortez, CO 81321	(970) 565-3728
Montrose	320 S. First St., Montrose, CO 81401	(970) 249-3362 ext. 3
Morgan	231 Ensign, Ft. Morgan, CO 80701	(970) 542-3521
Otero	13 W. Third St., Room 210, La Junta, CO 81050	(719) 383-3020
Ouray	541 Fourth St., Ouray, CO 81427	(970) 325-4961
Park	501 Main St., Fairplay, CO 80440	(719) 836-4333 ext. 1
Phillips	221 S. Interocean Ave., Holyoke, CO 80734	(970) 854-3131
Pitkin	530 E. Main St. #101, Aspen, CO 81611	(970) 920-5180 ext. 5
Prowers	301 S. Main St. #210, Lamar, CO 81052	(719) 336-8011
Pueblo	720 N. Main St., Suite 200, Pueblo, CO 81003	(719) 583-6620
Rio Blanco	555 Main St., Meeker, CO 81641	(970) 878-9460
Rio Grande	965 Sixth St., Del Norte, CO 81132	(719) 657-3334
Routt	522 Lincoln Ave. Steamboat Springs, CO 80487	(970) 870-5558
Saguache	501 Fourth St., Saguache, CO 81149	(719) 655-2512
San Juan	1557 Green St., Silverton, CO 81433	(970) 387-5671
San Miguel	305 W. Colorado Ave., Telluride, CO 81435	(970) 728-3954
Sedgwick	315 Cedar St., Julesburg, CO 80737	(970) 474-3346
Summit	208 E. Lincoln Ave., Breckenridge, CO 80424	(970) 453-3479
Teller	101 W. Bennett Ave., Cripple Creek, CO 80813	(719) 689-2951 ext. 2
Washington	150 Ash, Akron, CO 80720	(970) 345-6565
Weld	1401 N. 17th Ave., Greeley, CO 80632	(970) 304-6525
Yuma	310 Ash St., Suite F, Wray, CO 80758	(970) 332-5809