

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p> <hr/> <p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p> <hr/> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2017-2018 #4 (“Limit on Local Housing Growth”)</p> <p>Petitioners: Scott E. Smith and D. Michael Kopp</p> <p>v.</p> <p>Respondents: Dan Hayes and Julianne Page</p> <p>and</p> <p>Title Board: SUZANNE STAIERT; SHARON EUBANKS; and GLENN ROPER</p>	<p style="text-align: right;">DATE FILED: January 31, 2017 7:12 PM</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorney for Petitioner Scott E. Smith: Mark G. Grueskin, #14621 RECHT KORNFELD, P.C. 1600 Stout Street, Suite 1400 Denver, CO 80202 Phone: 303-573-1900 Facsimile: 303-446-9400 Email: mark@rklawpc.com</p>	<p>Case No. 2017SA6</p>
<p style="text-align: center;">PETITIONER SCOTT E. SMITH’S OPENING BRIEF ON PROPOSED INITIATIVE 2017-2018 #4 (“LIMIT ON LOCAL HOUSING GROWTH”)</p>	

CERTIFICATE OF COMPLIANCE

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

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

Choose one:

It contains _____ words.

It does not exceed 30 pages.

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

For the party raising the issue:

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

For the party responding to the issue:

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

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

s/ Mark G. Grueskin

Mark G. Grueskin

Attorney for Petitioner Scott E. Smith

TABLE OF CONTENTS

SUMMARY OF ISSUES PRESENTED.....1

STATEMENT OF THE CASE.....1

A. Statement of Facts.....1

B. Nature of the Case, Course of Proceedings, and Disposition Below.....3

SUMMARY OF ARGUMENT.....5

LEGAL ARGUMENT.....6

A. The Title Board lacked jurisdiction to set a ballot title because Initiative #4 violates the single subject requirement.....6

 1. *Standard of review; preservation of issue below*.....6

 2. *#4’s first subject: creation of a county right of initiative*7

 3. *#4’s second subject: restricting powers of voters in home rule cities*9

 4. *#4’s third subject: special controls on growth in 10 Front Range counties*.....12

 5. *#4’s fourth subject: array of procedures for growth initiatives*14

B. The Title Board erred when it established the “abstract” for the petition form.....15

 1. *Standard of review; preservation of issue below*.....16

 2. *The abstract is misleading*.....18

 3. *The abstract fails to state the fiscal effects specified by statute*.....20

CONCLUSION.....24

TABLE OF AUTHORITIES

Cases

<i>Aisenberg v. Campbell</i> , 960 P.2d 1204, 1206 (Colo. 1998)	10
<i>Board of County Comm’rs v. County Rd. Users Ass’n</i> , 11 P.3d 432 (Colo. 2000)...	8
<i>Buckley v. Chilcutt</i> , 968 P.2d 112, 118 (Colo. 1998)	14
<i>Dellinger v. Bd. of County Comm’rs</i> , 20 P.3d 1234, 1237 (Colo. Ct. App. 2000)....	9
<i>In re Amend Tabor # 25</i> , 900 P.2d 121, 125 (Colo. 1995)	15
<i>In re Proposed Ballot Initiative on Parental Rights</i> , 913 P.2d 1127, 1137 (Colo. 1996)	17
<i>In re Proposed Initiative for an Amendment to Article XVI, Section 5 Colorado Constitution, Entitled “W.A.T.E.R.”</i> , 831 P.2d 1301, 1306 (Colo. 1992).....	16, 17
<i>In re Title, Ballot Title & Submission Clause for Proposed Initiatives 2011-2012 Nos. 67, 68, & 69</i> , 2013 CO 1 at ¶12 (Colo. 2013)	17, 23
<i>In re Title, Ballot Title and Submission Clause, and Summary Concerning Limited Gaming in the City of Antonito</i> , 873 P.2d 733, 742 (Colo. 1994)	20
<i>In the Matter of the Title, Ballot Title and Submission Clause for Proposed Initiative 2001-2002 #43</i> , 46 P.3d 438, 448 (Colo. 2002).....	10, 11, 15
<i>In the Matter of the Title, Ballot Title and Submission Clause, and Summary Adopted April 17, 1996 (1996-17)</i> , 920 P.2d 798, 802 (Colo. 1996)	7, 20
<i>In the Matter of the Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 172, No. 173, No. 174, and No. 175</i> , 987 P.2d 243, 245 (Colo. 1999)	6
<i>In the Matter of the Title, Ballot Title and Submission Clause, and Summary Pertaining to a Proposed Initiative “Public Rights in Waters II,”</i> 898 P.2d 1076, 1079 (Colo. 1995)	13
<i>In the Matter of the Title, Ballot Title, Submission Clause, and Summary Adopted April 17, 1996</i> , 920 P.2d 798, 803 (Colo. 1996)	19
<i>In the Matter of Title, Ballot Title and Submission Clause for Initiative 2013-2014 #76</i> , 2014 CO 52 ¶32 (Colo. 2014).....	7, 14
<i>In the Matter of Title, Ballot Title and Submission Clause, and Summary for Initiative 1999-2000 #256</i> , 12 P.3d 246 (Colo. 2000).....	11
<i>Pennobscot, Inc. v. Bd. of County Comm’rs</i> , 642 P.2d 915, 918 (Colo. 1982)	7
<i>Save Palisade FruitLands v. Todd</i> , 279 F.3d 1204 (10th Cir. 2002).....	8

Statutes

C.R.S. § 1-40-105.5 16, 17, 21
C.R.S. § 1-40-106(3)(a)16
C.R.S. § 1-40-107(1)(a)(II)..... 17, 21
C.R.S. § 29-2-104(1).....8
C.R.S. § 30-11-5087

Other Authorities

Merriam-Webster’s Collegiate Dictionary 114 (11th Ed. 2003).....22

Constitutional Provisions

Colo. Const. art. XX, § 610
Colo. Const., art. V, § 1(2), (9).....7
Colo. Const., art. V, §1(5.5).....6

SUMMARY OF ISSUES PRESENTED

Whether the Title Setting Board erred by setting a ballot title for an initiative that: (1) created the first constitutionally based county right of initiative for housing growth for all local governments; (2) established new procedures that are unique to this county right of initiative on housing growth; (3) restricted the limited rights of home rule voters in ten (10) named Front Range counties, given that these home rule voters' control over election processes and land use matters would be subordinate to voters' decisions in the counties in which the home rule jurisdictions are located; and (4) created one process for housing growth limitation in ten (10) named Front Range counties and another process for housing growth limitation in the other 54 counties.

Whether the Title Board erred in applying a newly adopted statute that requires an "abstract" about a proposed initiative's fiscal effects, as the Board-approved abstract is misleading and also fails to include the specific information mandated by law relating to public revenues affected, recurring expenditures incurred, and benefits generated by the initiative.

STATEMENT OF THE CASE

A. Statement of Facts.

Daniel Hayes and Julianne Page (hereafter "Proponents") proposed Initiative 2017-2018 #4 ("Initiative #4" or "#4"). This measure would amend the Colorado

Constitution to establish multiple mechanisms that change the right of initiative, the rights of home rule jurisdictions and their voters, and the regulation of housing growth at the local levels. Among its various provisions, this initiative:

- Permits the electors of every city, town, city and county, or county to limit housing growth by initiative and referendum;
- Permits county voters by initiative and referendum to limit housing growth uniformly within the county, so that countywide limits are binding on all local governments;
- Establishes new procedures for housing growth initiatives and referenda at the local government level, whether such governmental units are statutory or home rule.

Proposed Colo. Const., art. XVIII, § 17(1), (4), (5).

Moreover, Initiative #4 implements different, but very specific, restrictions that apply only to ten (10) named Front Range counties (the city and counties of Broomfield and Denver, as well as the counties of Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer, and Weld). Specifically, #4:

- Limits the growth of privately owned residential housing units to one percent (1%) annually starting in 2019;
- Suspends the statewide right of initiative to address housing growth matters for purposes of revising the 1% housing growth limitation for

two years and allowing the exercise of initiative and referendum as to such issues only beginning in 2021; and

- Prohibits the issuance of new permits for privately owned housing units by local governments located in whole or in part within such counties and such cities and counties until January 1, 2019.

Proposed Colo. Const., art. XVIII, § 17(2).

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

A review and comment hearing on #4 was held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter the Proponents submitted a final version of the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board, of which the Secretary or his designee is a member.

A Title Board hearing was held on December 7, 2016, at which time title setting was denied for 2017-2018 #4 on the basis that the measure did not constitute a single subject. That earlier measure included provisions setting a minimum of thirty percent (30%) of new housing as affordable housing. After that decision by the Title Board, the Proponents resubmitted 2017-2018 #4, having removed the second subject identified by the Title Board.

Thereafter, a Title Board hearing was held on December 21, 2016 to establish the single subject of the Proposed Initiative and set its title. The Board found a single subject to exist and set a title.

On December 28, 2016, Petitioner Scott E. Smith (“Smith”) and Michael Kopp (“Kopp”) filed Motions for Rehearing, alleging that #4 contained multiple subjects, the titles set were misleading, and the abstract was inconsistent with statutory mandates. The rehearing was held on January 4, 2017, at which time the Title Board granted in part and denied in part the Motion for Rehearing.

The Board reset a title, as follows:

Shall there be 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 counties and such cities and counties until January 1, 2019, 2) limiting the growth of privately owned residential housing units to one percent annually starting in 2019, and 3) permitting the one percent growth limitation to be amended or repealed by initiative and referendum commencing in 2021?

SUMMARY OF ARGUMENT

The Title Board set a ballot title for Initiative 2017-2018 #4 which deals with multiple matters including housing growth limits as set by local initiative, procedures to effectuate the new county right of initiative, a mandatory housing growth limit for ten (10) named Front Range counties, and an undercutting of the rights of home rule jurisdictions to control their own housing growth. This title setting was error. At minimum, this measure pits one form of housing growth control for less urban communities against a more aggressive form of housing growth restrictions for the 10 Front Range counties that are specifically called out in the measure. The single subject requirement was implemented to prevent proponents from seeking support from factions that have different or even competing interests. This measure does exactly that and, for that reason, should be returned to its supporters to cure this failing.

Additionally, the Title Board approved an “abstract” under a new statute that applies to initiative petitions. Under the recently enacted statute, each initiative petition must contain a summary of fiscal effects of a proposed measure. As is relevant here, the abstract must estimate state and local revenues, expenditures, taxes, and fiscal liabilities if the measure is enacted, as well as the amount of any recurring expenditures by state and local governments. Further, the abstract must set forth the measure’s economic benefits for all Coloradans. The abstract for

Initiative #4 accomplished none of these objectives. In fact, there is not even a category for “benefits” listed in the abstract. Instead, the abstract discusses the “impacts” of the measure. The Board erred by failing to follow the express direction of the statute and by avoiding a clear discussion of the measure’s benefits. Thus, the Board must retool the abstract upon remand.

LEGAL ARGUMENT

A. The Title Board lacked jurisdiction to set a ballot title because Initiative #4 violates the single subject requirement.

1. Standard of review; preservation of issue below.

The Colorado Constitution requires that any initiative must comprise a single subject in order to be considered by the Title Board. Colo. Const., art. V, § 1(5.5). Where a measure contains multiple subjects, the Board lacks jurisdiction to set a title. The Board’s analysis and this Court’s review is a limited one, addressing the meaning of an initiative to identify its subject or subjects. *In the Matter of the Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 172, No. 173, No. 174, and No. 175*, 987 P.2d 243, 245 (Colo. 1999). To find that a measure addresses only one subject, the Court must determine that an initiative’s topics are “necessarily and properly” related to the general single subject assigned to the measure by the Title Board, rather than “disconnected or incongruous” with that subject. *In the Matter of the Title, Ballot Title and*

Submission Clause, and Summary Adopted April 17, 1996 (1996-17), 920 P.2d 798, 802 (Colo. 1996). Properly applied, the single subject requirement assures that the ballot measure presented to voters does not reflect “log rolling” or “Christmas tree tactics” such that a subject of a proposed initiative is “coiled up in the folds of a complex proposal.” *In the Matter of Title, Ballot Title and Submission Clause for Initiative 2013-2014 #76*, 2014 CO 52 at ¶32 (Colo. 2014).

The single subject issues raised in this appeal were presented to the Board at the rehearing and thus preserved for review. *See* Scott E. Smith’s Motion for Rehearing on Initiative 2017-2017 #4 at 1-2 (¶¶1-2, 5-8).

2. *#4’s first subject: creation of a county right of initiative.*

The initiative creates the first and only constitutional right of initiative at the county level. Currently, the Constitution grants the general right of initiative to state voters and municipal voters. Colo. Const., art. V, § 1(2), (9).

Counties are subdivisions of the state that possess limited powers. They have express powers through the constitution or state statute, as well as implied powers that are necessary to carry those functions out. *Pennobscot, Inc. v. Bd. of County Comm’rs*, 642 P.2d 915, 918 (Colo. 1982).

There are two types of counties – home rule and statutory. Home rule counties must offer their voters the right of initiative, which right is general in nature. C.R.S. § 30-11-508. Statutory counties, on the other hand, offer only those

initiatives that have been specifically authorized by statute. *See, e.g.*, C.R.S. § 29-2-104(1) (statutory county's voters may use an initiative to authorize a county sales and use tax, but they are prohibited from using an initiative to extend the tax or change the use of tax proceeds or the distribution among a county's local governments).

Initiative #4 would allow the use of the right of initiative in any county and would further allow voters to establish such limit on a countywide basis.

Specifically, the measure empowers:

electors of every city, town, city and county, or local county, whether statutory or home rule,... to limit housing growth by initiative and referendum without legislative inhibition or penalty. This right is further reserved on a countywide basis whereby electors throughout a county may elect to limit housing growth uniformly in all local governments and any part of such, whether statutory or home rule, within such county by initiative and referendum.

Proposed Colo. Const., art. XVIII, § 17(1).

#4 creates a new county right of initiative, expanding the powers of voters in all counties in ways that are novel and potentially controversial. Colorado voters have sued – unsuccessfully – to obtain the right for county initiative on specific topics. *See Save Palisade FruitLands v. Todd*, 279 F.3d 1204 (10th Cir. 2002) (proposed initiative concerning county land use); *Board of County Comm'rs v. County Rd. Users Ass'n*, 11 P.3d 432 (Colo. 2000) (unsuccessful mandamus action, seeking to compel county and its commissioners to refer initiative

concerning countywide sales tax to voters). Given the structural constraints in place governing the right of initiative, no such right has been said to exist, even as to growth constraints. *Dellinger v. Bd. of County Comm'rs*, 20 P.3d 1234, 1237 (Colo. Ct. App. 2000) (growth limitation proposal to “place a one percent limit on the annual increase in new residential dwelling units in unincorporated associations”).

Initiative #4 reverses such precedent and, by means of a distinct subject in this measure, establishes a constitutionally based county right of initiative dealing with housing growth limits.

3. #4's second subject: restricting powers of voters in home rule cities.

Initiative #4 provides the right of initiative so that “electors throughout a county” would have the power “to limit housing growth uniformly in all local governments... whether statutory or home rule.” Proposed Colo. Const., art. XVIII, § 17(1). As a result, county voters could force home rule municipalities to accept a limit on housing growth that is at odds with the choice of such municipalities. Thus, the decisions by county electors would take precedence over any inconsistent decisions reached by municipal voters in a home rule jurisdiction.

This restriction on the power of voters in all home rule municipalities in the State is a major change in the autonomy of such voters. The restriction on the inherent powers of home rule jurisdictions is a single subject concern. *Aisenberg*

v. Campbell, 960 P.2d 1204, 1206 (Colo. 1998) (initiative violated the single subject requirement where, in combination with changes to judicial department, it sought “to deprive home rule cities of their power over the election, appointment and retention of municipal court judges in their territorial limits”). The Colorado Constitution grants to home rule cities sole authority to determine how elections that determine their policies are governed, *see* Colo. Const. art. XX, § 6, as well as sole authority to make local land use decisions. *In the Matter of the Title, Ballot Title and Submission Clause for Proposed Initiative 2001-2002 #43*, 46 P.3d 438, 448 (Colo. 2002) (“zoning matters are peculiarly a matter of local concern”).

Initiative #4 provides a device where both election and land use decisions (here, the amount of housing growth to be permitted) are wrested from home rule cities and given over to county voters who may be miles away and entirely unaffected by those decisions. Further, it invokes a newly created initiative right to displace local self-governance, including the exercise of initiative rights. The power of home rule cities to make these decisions is undisputed. “[L]ocal citizens’ rights of initiative and referendum can be an important part of the [zoning/land use] process.” *Id.* Using one jurisdiction’s initiative process to displace another’s is hardly a detail or a matter of implementation. Instead, it “presents a significant invasion of this fundamental constitutional right” as it is used at the municipal level. *Id.* “For home-rule cities and towns, this invasion is even more disturbing

given the ‘full right of self-government in both local and municipal matters’ afforded them by article XX, section 6.” *Id.* It is much more than a mere “process by which initiatives and referendums are placed on the ballot.” *Id.* It is a substantive restriction of fundamental rights.

Where this Court has determined that “management of growth” is a single subject, it evaluated the impacts of a broad initiative affecting home rule municipalities in a decision that preceded #43. *See In the Matter of Title, Ballot Title and Submission Clause, and Summary for Initiative 1999-2000 #256*, 12 P.3d 246 (Colo. 2000). In that much more limited initiative, the Court held that a growth management measure may “alter[]... the power and authority of home rule cities to make land use decisions.” *Id.* at 254.

That measure did not, however, grant county voters a new initiative right. Nor did it authorize the use of that right to displace the decisions of the voters within a home rule city. At most, the measure allowed voters to consider jurisdictional growth maps so that those voters could approve or disapprove the local government’s proposed growth areas. *Id.* at 264. Thus, the proposed process – originating with the local elected officials of the jurisdiction – was still a representative one.

Here, under the terms of #4, a local initiative could be proposed by electors living outside of the home rule jurisdictions in a county. Additionally, the petitions

could be signed by electors living outside of the home rule jurisdictions in a county. Finally, the new initiative could be approved by electors living outside of the home rule jurisdictions in a county. A measure pursued in this manner could be entirely driven and decided by county voters – and yet bind the home rule city. This type of growth control has no precedent and would be a surprise to voters who thought they were simply creating a measure that applied to counties qua counties.

Therefore, the Title Board erred, and this measure should be returned to the proponents given its violation of the single subject requirement.

4. #4's third subject: special controls on growth in 10 Front Range counties.

Initiative #4 imposes restrictions on growth in residential housing that apply to only ten (10) named counties in the State: Broomfield, Denver, Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer, and Weld. Specifically, these counties:

including all local governments within such counties, shall not exceed one percent annually for the years 2019 and 2020. In said counties each local government and any part of such, whether statutory or home rule, and each said city and county shall allot building permits so that housing growth does not exceed a one percent annual growth rate in the total number of housing units in each said year.... Beginning 2021 such growth limitations may be amended or repealed by initiative and referendum or otherwise shall remain in effect.

Proposed Colo. Const., art. XVIII, § 17(2).

This very distinctive set of restrictions – a one percent growth limit for the 10 counties and a suspension of the right that is created elsewhere in #4 for 54 of 64 counties – comprises a second subject. Obviously, the less populous counties that could gain the newly created right may view the initiative differently than the more populous, Front Range counties that will not have access to that very right, at least for 2 years.

This juxtaposition comprises exactly the sort of single subject problem that has been identified previously by this Court. “[T]he single subject requirement precludes the joining together of multiple subjects into a single initiative in the hope of attracting support from various factions which may have **different or even conflicting interests.**” *In the Matter of the Title, Ballot Title and Submission Clause, and Summary Pertaining to a Proposed Initiative “Public Rights in Waters II,”* 898 P.2d 1076, 1079 (Colo. 1995) (emphasis added). The application of the single subject requirement is intended to “prevent voter surprise or uninformed voting caused by items concealed within a lengthy or complex proposal.” *Id.*

These inconsistent approaches to dealing with growth – one that gives voters control in certain counties and the other that deprives voters of control and imposes a mandatory limit – represent such “different interests” and precisely the type of “separate subjects [that] must stand and be examined on their own merits.” #76, *supra*, 333 P.3d at ¶33. It is not enough that there is an overarching label that can

be used to group the two matters together. *Id.* at ¶34. In #76, the proposal to add non-elected officers to the elected officers who may be recalled from office was found to violate the single subject requirement. The mere fact that “recall” was cited by the proponents and the Title Board as a unifying theme was insufficient. *Id.* (invalidating title where the measure was based on “a single all-encompassing umbrella phrase”).

Therefore, the Title Board erred by setting a ballot title for #4.

5. *#4’s fourth subject: array of procedures for growth initiatives*

Initiative #4 sets up a vast array of petition procedures, including signature requirements, filing requirements, limits on challenges to petition formats, and limits on challenges to signature sufficiency. Proposed Colo. Const., art. XVIII, § 17(5).

Some of these procedures (such as setting the minimum number of signatures at 5% of the total number of votes in the last general election conducted in such local government or the filing requirements for county measures) are truly procedural in nature. In contrast, a qualified voter now has a statutory “right to challenge” the election official’s decision regarding sufficiency of signatures, a right that cannot be undermined by the operation of other petition laws. *Buckley v. Chilcutt*, 968 P.2d 112, 118 (Colo. 1998).

Moreover, an initiative may not use procedural changes to mask the substantive changes being proposed. Even if all the provisions in Proposed Colo. Const., art. XVIII, § 17(5) are procedural in nature, the fact that they are combined with substantive provisions – such as the 1% housing growth limit for ten Front Range counties and the two-year prohibition on exercising the initiative right in those counties – makes the combination a violation of the single subject requirement.

Although the elimination of the single-subject requirement and procedural measures governing the process by which initiatives are placed on the ballot both relate to the initiative and referendum process, the former serves a separate and discrete purpose from the latter. The procedural measures govern how a proponent exercises his right to petition. The single-subject requirement, in contrast, controls what an initiative placed on the ballot may contain. The elimination of this requirement, therefore, fundamentally alters the permissible scope of measures placed before the voters for their approval or rejection. A voter of average intelligence would be quite surprised to find out that an initiative purporting to deal with procedural aspects of the right to petition drastically altered the substance of measures on the ballot.

#43, supra, 46 P.3d at 446; *see also In re Amend Tabor # 25*, 900 P.2d 121, 125 (Colo. 1995) (invalidating ballot title set for tax credit as well as various procedural requirements for future ballot titles).

The Board’s decision to set this ballot title should be reversed, and Initiative #4 should be returned to its proponents.

B. The Title Board erred when it established the “abstract” for the petition form.

1. Standard of review; preservation of issue below.

In 2015, C.R.S. § 1-40-105.5 was adopted to require the development of certain fiscal information about proposed initiatives. Specifically, the title setting process now includes the development by legislative staff of an “abstract,” setting forth certain aspects of the fiscal effect of a proposed ballot measure. The abstract, which can be appealed to the Title Board, must include: (i) an estimate of the amount of any state and local revenues, expenditures, taxes, and fiscal liabilities if the measure is enacted; (ii) a statement of the measure’s economic benefits for all Coloradans; (iii) an estimate of the amount of any state and local government recurring expenditures; and (iv) where tax laws are changed, the estimated effect, “if feasible,” on the average taxpayer. C.R.S. § 1-40-105.5(3)(a)-(d).

This Court has never ruled on or interpreted this new statute. But previously, under the then-existing C.R.S. § 1-40-106(3)(a) that was repealed in 2000, the Title Board was required to produce a “fiscal impact statement.” The abstract, in the same manner as the fiscal impact statement under previous law, is included in the petition that is circulated to voters. C.R.S. § 1-40-105.5(4).

The Court’s opinions under previous law required a fiscal impact statement “to inform the electorate of the fiscal implications of a proposed measure.” *In re Proposed Initiative for an Amendment to Article XVI, Section 5 Colorado Constitution, Entitled “W.A.T.E.R.”*, 831 P.2d 1301, 1306 (Colo. 1992). The Title

Board had “considerable discretion” in communicating whether a measure has a fiscal impact and how to communicate that impact to voters. *Id.* Nevertheless, the Board’s discretion was “not unlimited,” as there had to be “some support in the record” for the Board’s decision.” *Id.* This Court required that fiscal impact statements be crafted in a “clear, fair, and neutral manner” in order “that the electorate is appropriately informed of the measure’s fiscal impact.” *In re Proposed Ballot Initiative on Parental Rights*, 913 P.2d 1127, 1137 (Colo. 1996) (Mullarkey, Ch.J., concurring in part and dissenting in part).

It should be noted that the abstract requires more factual information than did the fiscal impact statement of past election cycles. Therefore, the standard in past cases is not necessarily applicable under the new statute. The Court will “review the statutes governing the Board’s authority to act de novo” and construe it in a way that will “give effect to the General Assembly’s intent.” *In re Title, Ballot Title & Submission Clause for Proposed Initiatives 2011-2012 Nos. 67, 68, & 69*, 2013 CO 1 at ¶12 (Colo. 2013) (citations omitted).

Thus, rather than allow the Board to act only within the parameters of its “considerable discretion,” the Board must at least make material representations as to each of the factors provided specified in C.R.S. § 1-40-105.5(3). Further, as a matter of de novo review, the Court should assure that the standards of C.R.S. § 1-40-107(1)(a)(II) are met. In light of the heightened concern by the General

Assembly in ensuring voters understand a ballot measure's economic ramifications when they are presented with an initiative petition, an abstract that is inconclusive or noncompliant with the statute does not further the legislature's intent.

Objections to the adequacy of the abstract were presented to the Board at the rehearing and thus preserved for review. *See* Scott E. Smith's Motion for Rehearing on Initiative 2017-2017 #4 at 2-3.

2. The abstract is misleading.

The Title Board approved, without change, the staff's draft of an abstract for Initiative #4 which reads as follows:

Abstract of Initiative 4: Limit on Local Housing Growth

An initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of December 2016, identifies the following impacts:

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

Local government revenue and spending. 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.

See Exhibit 2 to Notice of Appeal of Scott E. Smith.

This statement is misleading for two reasons. First, it does not set forth any specific economic impact in the named 10 counties that are subject to the 1%, non-amendable growth limit. In fact, it does not even evaluate the different impacts between those 10 counties and the remaining 54 counties.

This failure was error. *See In the Matter of the Title, Ballot Title, Submission Clause, and Summary Adopted April 17, 1996*, 920 P.2d 798, 803 (Colo. 1996) (title was misleading where it did not “notify voters” that affected program “applies only to the City and County of Denver, Boulder County, Douglas County, Jefferson County, and parts of Adams and Arapahoe Counties”). At most, the abstract refers to housing values “where there are binding growth limits,” but this reference is non-precise and so easily missed as to be irrelevant. Where petition signers must struggle to understand the import of a phrase such as this one, it is misleading. This is

particularly true for initiatives that have “two distinct parts,” the descriptions of which “are buried” in such a way that “a voter quickly scanning” the abstract text “could be misled into believing the measure only concerns” one of the two issues. *In re Title, Ballot Title and Submission Clause, and Summary Concerning Limited Gaming in the City of Antonito*, 873 P.2d 733, 742 (Colo. 1994).

Second, this abstract is misleading because it does not say whether the fiscal effect of this measure can be determined or whether that fiscal effect is indeterminate. That patent lack of definition is misleading to voters.

The fact that the OSPB prepared two cost estimates based on two possible scenarios does not make the costs indeterminate. **Nor does the summary state that these costs are indeterminate.** In the unusual case such as this where there are discrete determinable possibilities depending on the outcome of a given study, **the Board should inform the voters of the costs of those outcomes.** The fiscal impact statement contained in the summary is therefore inaccurate.

In the Matter of Title Adopted April 17, 1996, supra, 920 P.2d at 804 (emphasis added). If the impact is indeterminate, the Board had an obligation to ensure that the abstract said so. Here, it did not.

The abstract is misleading and should be returned to the Board to cure these inadequacies.

3. *The abstract fails to state the fiscal effects specified by statute.*

In violation of C.R.S. § 1-40-107(1)(a)(II)(C), the abstract does not clearly set forth the information mandated by C.R.S. § 1-40-105.5(3): (i) an estimate of the amount of any state and local revenues, expenditures, taxes, and fiscal liabilities if the measure is enacted; (ii) a statement of the measure’s economic benefits for all Coloradans; and (iii) an estimate of the amount of any state and local government recurring expenditures.

There is no estimate of state and local revenues, expenditures, taxes, and fiscal liabilities and no estimate of state and local government recurring expenditures, as required by statute. C.R.S. § 1-40-105.5(3)(a), (c). The abstract narratives provided do not meet the terms of these statutory mandates. They simply provide general narratives as to the measure’s possible economic consequences. But there is no solid information upon which a voter could more thoroughly assess the measure. This failure represents non-compliance with the statute.

Further, there is no statement at all about the measure’s economic benefits. C.R.S. § 1-40-105.5(3)(b). Neither is there a statement that the measure will fail to yield any economic benefits to Coloradans. The abstract only includes a section on “Economic Impacts,” consisting of three sentences. One addresses the possibility of higher property values. (“The value of existing housing units may increase in communities where there are binding growth limits, impacting homeowners and

landlords.”) No benefit is ascribed to this change. The second addresses the increased expense associated with moving into certain unnamed counties. (“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.”) This is hardly a benefit, other than for existing property owners who seek to sell or rent their properties. And the third sentence is so non-specific as to be functionally meaningless as to the question of the initiative’s benefits. (“Limits on housing permits will also impact the distribution of construction employment, retail trade, and population within Colorado.”)

One of the Title Board members questioned whether “impacts” and “benefits” were synonymous or at least interchangeable. *See* January 4, 2017 Title Board Transcript (“Tr.”) (attached hereto as Exhibit 3) at 70:18-71:3 (statement of Title Board member, Sharon Eubanks). She specifically noted, “To me economic benefits means something different than economic impacts.” *Id.* at 70:20-21.

This observation was correct. A “benefit” is “something that promotes well-being: ADVANTAGE.” *Merriam-Webster’s Collegiate Dictionary* 114 (11th Ed. 2003). On the other hand, an “impact” is “the force of impression of one thing on another: a significant or major effect <the ~ of science on our society> <an environmental ~ study>.” *Id.* at 622. “Impact” is quite clearly a broader term than “benefit.”

As one Board member decided to apply the concept here, “impact” includes negative consequences of a measure, not simply its “advantages.” Tr. at 74:22-75:8 (this section of abstract should address “net benefits” and thus take “into account some of the costs” of the measure) (statement of Title Board member, Glenn Roper). The Board’s third member agreed with this view. “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 see what the benefit is.” Tr. at 75:9-18 (statement of Title Board member, Suzanne Staiert).

This position reflects an improbable approach to the notion of benefits. As Ms. Eubanks observed, “I do have a problem with the last paragraph of the abstract in terms of being economic impacts rather than benefits.... [Legislative fiscal notes] generally balance both the positive and negative economic impacts of a measure.... And to me, as a benefit, I don’t think the negative impact should be included at all.” Tr. at 73:11-13, 73:16-18; 74.1-2.

The failure to comply with the statute was error. Certainly, if new requirements of law may be applied in order to ensure that “the Board has access to the information it needs to resolve the substantive issues raised at any meeting concerning a proposed initiative,” *Initiatives 2011-2012 Nos. 67, 68, & 69, supra*, 2013 CO 1 at ¶28, these provisions should be applied to assure that voters have the

information they need to determine whether to sign a petition. Here, the Board failed to do so, and its failure can be remedied with the direction of this Court to provide that information to petition signers.

Accordingly, the decision of the Board to retain the staff draft of the abstract was error and should be reversed.

CONCLUSION

Initiative #4 violates the single subject requirement, and the abstract violates the new statute that sets clear requirements for this important portion of the initiative petition. The Court should reverse the decisions of the Board and declare that: (1) the ballot title set for #4 is void for lack of Board jurisdiction; and (2) the abstract fails to comply with the mandatory provisions of the statute pertaining to initiative abstracts and direct the Board to revise the abstract for #4 accordingly.

Respectfully submitted this 31st day of January, 2017.

/s/ Mark Grueskin

Mark G. Grueskin, #14621
RECHT KORNFELD, P.C.
1600 Stout Street, Suite 1400
Denver, CO 80202
Phone: 303-573-1900
Facsimile: 303-446-9400
Email: mark@rklawpc.com

ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the **PETITIONER SCOTT E. SMITH'S OPENING BRIEF ON PROPOSED INITIATIVE 2017-2018 #4 ("LIMIT ON LOCAL HOUSING GROWTH")** was sent this day, January 31, 2017, via Colorado Courts E-Filing to counsel for the Title Board and via Federal Express overnight to the proponents at:

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

Dan Hayes
5115 Easley Rd
Golden, CO 80403

Julianne Page
3565 Kline Street
Wheat Ridge, CO 80033

/s Erin Holweger



DATE FILED: January 31, 2017 7:12 PM

STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

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

the attached are true and exact copies of the original text, amended text with strikeouts, amended text with additions, final text, and the rulings thereon of the Title Board for Proposed Initiative "2017-2018 #4 'Limit on Local Housing Growth'".....

A red wavy line that starts at the end of the text above and extends diagonally across the page towards the bottom right.

..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 10th day of January, 2017.

A blue ink signature of Wayne W. Williams.

SECRETARY OF STATE



BE IT ENACTED BY THE PEOPLE OF THE STATE OF COLORADO:
ARTICLE XVIII OF THE CONSTITUTION OF THE STATE OF COLORADO IS AMENDED BY THE
ADDITION OF A NEW SECTION TO READ:

Section 17. Colorado growth limitation

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

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

(3) AT LEAST THIRTY PERCENT OF THE HOUSING SUBJECT TO THE LIMITATION SHALL BE AFFORDABLE HOUSING AND AFFORDABLE SENIOR HOUSING.

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

(5) INITIATIVE AND REFERENDUM FOR THIS SECTION:

(a) SIGNATURE REQUIREMENTS FOR INITIATIVE AND REFERENDUM FOR ENACTING, REPEALING, OR AMENDING, PROPOSALS TO REGULATE THE GROWTH OF PRIVATELY OWNED RESIDENTIAL HOUSING FOR LOCAL GOVERNMENTS, WHETHER STATUTORY OR HOME RULE, SHALL BE AT LEAST FIVE PERCENT OF THE TOTAL NUMBER OF VOTERS PARTICIPATING IN THE MOST RECENT GENERAL ELECTION IN SUCH LOCAL GOVERNMENT. SUCH PROPOSALS ON A COUNTYWIDE BASIS SHALL BE A SUMMATION OF SUCH REQUIREMENT FROM EACH LOCAL GOVERNMENT ANY PART OF A LOCAL GOVERNMENT NOT GOVERNED WITHIN SUCH COUNTY.

(b) PETITIONS FOR COUNTYWIDE PROPOSALS SHALL BE ISSUED BY THE COUNTY CLERK FOR ALL LOCAL GOVERNMENTS OR ANY PART OF SUCH WITHIN SUCH COUNTY WITH STATED MINIMUM SIGNATURE REQUIREMENTS FOR EACH SUCH ENTITY.

(c) A SINGLE CHALLENGE FOR THE FORM AND CONTENT OF A PETITION MAY BE FILED WITHIN TEN BUSINESS DAYS FOLLOWING APPROVAL BY THE CLERK OF A LOCAL GOVERNMENT OR BY THE COUNTY CLERK IN THE CASE OF COUNTYWIDE PETITIONS AND BEFORE SIGNATURE GATHERING COMMENCES. AN EXPEDITED JUDICIAL DECISION FOR SUCH A CHALLENGE SHALL BE FINAL.

(d) A SINGLE CHALLENGE FOR SIGNATURE SUFFICIENCY MAY BE FILED WITHIN TEN BUSINESS OF THE CLERK'S CERTIFICATION OF SIGNATURE SUFFICIENCY AND AFTER ALLOWING FOR ADDITIONAL NEEDED SIGNATURES. RECERTIFICATION SHALL NOT EXCEED TWO WEEKS AND SHALL BE FINAL.

(6) AS IF ANY PROVISION OF THIS SECTION IS HELD INVALID, THE REMAINDER OF THIS

Colorado Secretary of State

NOV 23 2018

S. WARD

RECEIVED

1:45 PM.

SECTION SHALL REMAIN UNIMPAIRED.

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

(a) "AFFORDABLE HOUSING" MEANS HOUSING AT LEAST THIRTY PERCENT LOWER IN SALES PRICE THAN AVERAGE COMPARABLE NEWLY CONSTRUCTED HOUSING WITHIN THE SAME LOCAL GOVERNMENT.

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

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

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

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

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

Proponents:

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

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

2017-2018 #4
Amended (Insertions)

BE IT ENACTED BY THE PEOPLE OF THE STATE OF COLORADO:
ARTICLE XVIII OF THE CONSTITUTION OF THE STATE OF COLORADO IS AMENDED BY THE
ADDITION OF A NEW SECTION TO READ:

Section 17. Colorado growth limitation

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

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

(3) AT LEAST THIRTY PERCENT OF THE HOUSING SUBJECT TO THE LIMITATION SHALL BE AFFORDABLE HOUSING AND AFFORDABLE SENIOR HOUSING.

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

(5) INITIATIVE AND REFERENDUM FOR THIS SECTION:

(a) SIGNATURE REQUIREMENTS FOR INITIATIVE AND REFERENDUM FOR ENACTING, REPEALING, OR AMENDING, PROPOSALS TO REGULATE THE GROWTH OF PRIVATELY OWNED RESIDENTIAL HOUSING FOR LOCAL GOVERNMENTS, WHETHER STATUTORY OR HOME RULE, SHALL BE FIVE PERCENT OF THE TOTAL NUMBER OF VOTERS PARTICIPATING IN THE MOST RECENT GENERAL ELECTION IN SUCH LOCAL GOVERNMENT. SUCH PROPOSALS ON A COUNTYWIDE BASIS SHALL INCLUDE THE SUMMATION OF SUCH REQUIREMENT FROM EACH LOCAL GOVERNMENT AND ANY PART OF A LOCAL GOVERNMENT NOT GOVERNED WITHIN SUCH COUNTY ACCUMULATED FOR THE TOTAL SIGNATURE REQUIREMENT AS DETERMINED BY THE COUNTY CLERK.

(b) PETITIONS FOR COUNTYWIDE PROPOSALS SHALL BE ISSUED BY THE COUNTY CLERK FOR ALL LOCAL GOVERNMENTS OR ANY PART OF SUCH WITHIN SUCH COUNTY WITH STATED MINIMUM SIGNATURE REQUIREMENTS FOR EACH SUCH ENTITY.

(c) ONLY ONE CHALLENGE FOR THE FORM AND CONTENT OF A PETITION SHALL BE ALLOWED AND MUST BE FILED WITHIN TEN BUSINESS DAYS FOLLOWING APPROVAL BY THE CLERK OF A LOCAL GOVERNMENT OR BY THE COUNTY CLERK IN THE CASE OF COUNTYWIDE PETITIONS AND BEFORE SIGNATURE GATHERING COMMENCES. AN EXPEDITED JUDICIAL DECISION FOR SUCH A CHALLENGE SHALL BE FINAL.

(d) ONLY ONE CHALLENGE FOR SIGNATURE SUFFICIENCY SHALL BE ALLOWED AND MUST BE FILED WITHIN TEN BUSINESS OF THE CLERK'S CERTIFICATION OF SIGNATURE SUFFICIENCY AND AFTER ALLOWING FOR ADDITIONAL NEEDED SIGNATURES. RECERTIFICATION SHALL NOT EXCEED TWO WEEKS AND SHALL BE FINAL.

Colorado Secretary of State

NOV 23 2018 S.W.A.E.D

RECEIVED 1:45 P.M.

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

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

(a) "AFFORDABLE HOUSING" MEANS HOUSING AT LEAST THIRTY PERCENT LOWER IN SALES PRICE THAN AVERAGE COMPARABLE NEWLY CONSTRUCTED HOUSING WITHIN THE SAME LOCAL GOVERNMENT.

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

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

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

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

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

Proponents:

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

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

2017-2018 #4
Amended (Strikeouts)

BE IT ENACTED BY THE PEOPLE OF THE STATE OF COLORADO:
ARTICLE XVIII OF THE CONSTITUTION OF THE STATE OF COLORADO IS AMENDED BY THE
ADDITION OF A NEW SECTION TO READ:

Section 17. Colorado growth limitation

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

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

(3) AT LEAST THIRTY PERCENT OF THE HOUSING SUBJECT TO THE LIMITATION SHALL BE AFFORDABLE HOUSING AND AFFORDABLE SENIOR HOUSING.

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

(5) INITIATIVE AND REFERENDUM FOR THIS SECTION:

(a) SIGNATURE REQUIREMENTS FOR INITIATIVE AND REFERENDUM FOR ENACTING, REPEALING, OR AMENDING, PROPOSALS TO REGULATE THE GROWTH OF PRIVATELY OWNED RESIDENTIAL HOUSING FOR LOCAL GOVERNMENTS, WHETHER STATUTORY OR HOME RULE, SHALL BE AT LEAST FIVE PERCENT OF THE TOTAL NUMBER OF VOTERS PARTICIPATING IN THE MOST RECENT GENERAL ELECTION IN SUCH LOCAL GOVERNMENT. SUCH PROPOSALS ON A COUNTYWIDE BASIS SHALL BE A SUMMATION OF SUCH REQUIREMENT FROM EACH LOCAL GOVERNMENT ANY PART OF A LOCAL GOVERNMENT NOT GOVERNED WITHIN SUCH COUNTY.

(b) PETITIONS FOR COUNTYWIDE PROPOSALS SHALL BE ISSUED BY THE COUNTY CLERK FOR ALL LOCAL GOVERNMENTS OR ANY PART OF SUCH WITHIN SUCH COUNTY WITH STATED MINIMUM SIGNATURE REQUIREMENTS FOR EACH SUCH ENTITY.

(c) A SINGLE CHALLENGE FOR THE FORM AND CONTENT OF A PETITION MAY BE FILED WITHIN TEN BUSINESS DAYS FOLLOWING APPROVAL BY THE CLERK OF A LOCAL GOVERNMENT OR BY THE COUNTY CLERK IN THE CASE OF COUNTYWIDE PETITIONS AND BEFORE SIGNATURE GATHERING COMMENCES. AN EXPEDITED JUDICIAL DECISION FOR SUCH A CHALLENGE SHALL BE FINAL.

(d) A SINGLE CHALLENGE FOR SIGNATURE SUFFICIENCY MAY BE FILED WITHIN TEN BUSINESS OF THE CLERK'S CERTIFICATION OF SIGNATURE SUFFICIENCY AND AFTER ALLOWING FOR ADDITIONAL NEEDED SIGNATURES. RECERTIFICATION SHALL NOT EXCEED TWO WEEKS AND SHALL BE FINAL.

(6) As If ANY PROVISION OF THIS SECTION IS HELD INVALID, THE REMAINDER OF THIS

Colorado Secretary of State

NOV 23 2018

S. WARD

RECEIVED

1:45 P.M.

SECTION SHALL REMAIN UNIMPAIRED.

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

(a) "AFFORDABLE HOUSING" MEANS HOUSING AT LEAST THIRTY PERCENT LOWER IN SALES PRICE THAN AVERAGE COMPARABLE NEWLY CONSTRUCTED HOUSING WITHIN THE SAME LOCAL GOVERNMENT.

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

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

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

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

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

Proponents:

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

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

BE IT ENACTED BY THE PEOPLE OF THE STATE OF COLORADO:
ARTICLE XVIII OF THE CONSTITUTION OF THE STATE OF COLORADO IS AMENDED BY THE
ADDITION OF A NEW SECTION TO READ:

Section 17. Colorado growth limitation

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

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

(3) AT LEAST THIRTY PERCENT OF THE HOUSING SUBJECT TO THE LIMITATION SHALL BE AFFORDABLE HOUSING AND AFFORDABLE SENIOR HOUSING.

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

(5) INITIATIVE AND REFERENDUM FOR THIS SECTION:

(a) SIGNATURE REQUIREMENTS FOR INITIATIVE AND REFERENDUM FOR ENACTING, REPEALING, OR AMENDING, PROPOSALS TO REGULATE THE GROWTH OF PRIVATELY OWNED RESIDENTIAL HOUSING FOR LOCAL GOVERNMENTS, WHETHER STATUTORY OR HOME RULE, SHALL BE FIVE PERCENT OF THE TOTAL NUMBER OF VOTERS PARTICIPATING IN THE MOST RECENT GENERAL ELECTION IN SUCH LOCAL GOVERNMENT. SUCH PROPOSALS ON A COUNTYWIDE BASIS SHALL INCLUDE THE SUMMATION OF SUCH REQUIREMENT FROM EACH LOCAL GOVERNMENT AND ANY PART OF A LOCAL GOVERNMENT NOT GOVERNED WITHIN SUCH COUNTY ACCUMULATED FOR THE TOTAL SIGNATURE REQUIREMENT AS DETERMINED BY THE COUNTY CLERK.

(b) PETITIONS FOR COUNTYWIDE PROPOSALS SHALL BE ISSUED BY THE COUNTY CLERK FOR ALL LOCAL GOVERNMENTS OR ANY PART OF SUCH WITHIN SUCH COUNTY WITH STATED MINIMUM SIGNATURE REQUIREMENTS FOR EACH SUCH ENTITY.

(c) ONLY ONE CHALLENGE FOR THE FORM AND CONTENT OF A PETITION SHALL BE ALLOWED AND MUST BE FILED WITHIN TEN BUSINESS DAYS FOLLOWING APPROVAL BY THE CLERK OF A LOCAL GOVERNMENT OR BY THE COUNTY CLERK IN THE CASE OF COUNTYWIDE PETITIONS AND BEFORE SIGNATURE GATHERING COMMENCES. AN EXPEDITED JUDICIAL DECISION FOR SUCH A CHALLENGE SHALL BE FINAL.

(d) ONLY ONE CHALLENGE FOR SIGNATURE SUFFICIENCY SHALL BE ALLOWED AND MUST BE FILED WITHIN TEN BUSINESS OF THE CLERK'S CERTIFICATION OF SIGNATURE SUFFICIENCY AND AFTER ALLOWING FOR ADDITIONAL NEEDED SIGNATURES. RECERTIFICATION SHALL NOT EXCEED TWO WEEKS AND SHALL BE FINAL.

Colorado Secretary of State

NOV 29 2016

S. JARED

RECEIVED

1:45 P.M.

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

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

(a) "AFFORDABLE HOUSING" MEANS HOUSING AT LEAST THIRTY PERCENT LOWER IN SALES PRICE THAN AVERAGE COMPARABLE NEWLY CONSTRUCTED HOUSING WITHIN THE SAME LOCAL GOVERNMENT.

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

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

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

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

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

Proponents:

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

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

Ballot Title Setting Board

Proposed Initiative 2017-2018 #4¹

Hearing December 7, 2016:

Title setting denied on the basis that the measure does not constitute a single subject.

Hearing adjourned 2:23 p.m.

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



STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

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

the attached are true and exact copies of the original text, resubmitted amended text, resubmitted final text, motions for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2017-2018 #4 'Limit on Local Housing Growth'"

.....

IN TESTIMONY WHEREOF I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 10th day of January, 2017.

Wayne W. Williams

SECRETARY OF STATE



BE IT ENACTED BY THE PEOPLE OF THE STATE OF COLORADO:
ARTICLE XVIII OF THE CONSTITUTION OF THE STATE OF COLORADO IS AMENDED BY THE
ADDITION OF A NEW SECTION TO READ:

Section 17. Colorado growth limitation

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

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

(3) AT LEAST THIRTY PERCENT OF THE HOUSING SUBJECT TO THE LIMITATION SHALL BE AFFORDABLE HOUSING AND AFFORDABLE SENIOR HOUSING.

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

(5) INITIATIVE AND REFERENDUM FOR THIS SECTION:

(a) SIGNATURE REQUIREMENTS FOR INITIATIVE AND REFERENDUM FOR ENACTING, REPEALING, OR AMENDING, PROPOSALS TO REGULATE THE GROWTH OF PRIVATELY OWNED RESIDENTIAL HOUSING FOR LOCAL GOVERNMENTS, WHETHER STATUTORY OR HOME RULE, SHALL BE AT LEAST FIVE PERCENT OF THE TOTAL NUMBER OF VOTERS PARTICIPATING IN THE MOST RECENT GENERAL ELECTION IN SUCH LOCAL GOVERNMENT. SUCH PROPOSALS ON A COUNTYWIDE BASIS SHALL BE A SUMMATION OF SUCH REQUIREMENT FROM EACH LOCAL GOVERNMENT ANY PART OF A LOCAL GOVERNMENT NOT GOVERNED WITHIN SUCH COUNTY.

(b) PETITIONS FOR COUNTYWIDE PROPOSALS SHALL BE ISSUED BY THE COUNTY CLERK FOR ALL LOCAL GOVERNMENTS OR ANY PART OF SUCH WITHIN SUCH COUNTY WITH STATED MINIMUM SIGNATURE REQUIREMENTS FOR EACH SUCH ENTITY.

(c) A SINGLE CHALLENGE FOR THE FORM AND CONTENT OF A PETITION MAY BE FILED WITHIN TEN BUSINESS DAYS FOLLOWING APPROVAL BY THE CLERK OF A LOCAL GOVERNMENT OR BY THE COUNTY CLERK IN THE CASE OF COUNTYWIDE PETITIONS AND BEFORE SIGNATURE GATHERING COMMENCES. AN EXPEDITED JUDICIAL DECISION FOR SUCH A CHALLENGE SHALL BE FINAL.

(d) A SINGLE CHALLENGE FOR SIGNATURE SUFFICIENCY MAY BE FILED WITHIN TEN BUSINESS OF THE CLERK'S CERTIFICATION OF SIGNATURE SUFFICIENCY AND AFTER ALLOWING FOR ADDITIONAL NEEDED SIGNATURES. RECERTIFICATION SHALL NOT EXCEED TWO WEEKS AND SHALL BE FINAL.

(6) AS IF ANY PROVISION OF THIS SECTION IS HELD INVALID, THE REMAINDER OF THIS

Colorado Secretary of State

NOV 23 2018 S. WARD

RECEIVED 1:45 P.M.

SECTION SHALL REMAIN UNIMPAIRED.

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

(a) "AFFORDABLE HOUSING" MEANS HOUSING AT LEAST THIRTY PERCENT LOWER IN SALES PRICE THAN AVERAGE COMPARABLE NEWLY CONSTRUCTED HOUSING WITHIN THE SAME LOCAL GOVERNMENT.

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

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

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

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

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

Proponents:

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

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

2017-2018 #4
Amended (Resubmitted)

BE IT ENACTED BY THE PEOPLE OF THE STATE OF COLORADO:
ARTICLE XVIII OF THE CONSTITUTION OF THE STATE OF COLORADO IS AMENDED BY THE
ADDITION OF A NEW SECTION TO READ:

Section 17. Colorado growth limitation

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

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

~~(3) AT LEAST THIRTY PERCENT OF THE HOUSING SUBJECT TO THE LIMITATION SHALL BE AFFORDABLE HOUSING AND AFFORDABLE SENIOR HOUSING.~~

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

(5) INITIATIVE AND REFERENDUM FOR THIS SECTION:

(a) SIGNATURE REQUIREMENTS FOR INITIATIVE AND REFERENDUM FOR ENACTING, REPEALING, OR AMENDING, PROPOSALS TO REGULATE THE GROWTH OF PRIVATELY OWNED RESIDENTIAL HOUSING FOR LOCAL GOVERNMENTS, WHETHER STATUTORY OR HOME RULE, SHALL BE FIVE PERCENT OF THE TOTAL NUMBER OF VOTERS PARTICIPATING IN THE MOST RECENT GENERAL ELECTION IN SUCH LOCAL GOVERNMENT. SUCH PROPOSALS ON A COUNTYWIDE BASIS SHALL INCLUDE THE SUMMATION OF SUCH REQUIREMENT FROM EACH LOCAL GOVERNMENT AND ANY PART OF A LOCAL GOVERNMENT NOT GOVERNED WITHIN SUCH COUNTY ACCUMULATED FOR THE TOTAL SIGNATURE REQUIREMENT AS DETERMINED BY THE COUNTY CLERK.

(b) PETITIONS FOR COUNTYWIDE PROPOSALS SHALL BE ISSUED BY THE COUNTY CLERK FOR ALL LOCAL GOVERNMENTS OR ANY PART OF SUCH WITHIN SUCH COUNTY WITH STATED MINIMUM SIGNATURE REQUIREMENTS FOR EACH SUCH ENTITY.

(c) ONLY ONE CHALLENGE FOR THE FORM AND CONTENT OF A PETITION SHALL BE ALLOWED AND MUST BE FILED WITHIN TEN BUSINESS DAYS FOLLOWING APPROVAL BY THE CLERK OF A LOCAL GOVERNMENT OR BY THE COUNTY CLERK IN THE CASE OF COUNTYWIDE PETITIONS AND BEFORE SIGNATURE GATHERING COMMENCES. AN EXPEDITED JUDICIAL DECISION FOR SUCH A CHALLENGE SHALL BE FINAL.

(d) ONLY ONE CHALLENGE FOR SIGNATURE SUFFICIENCY SHALL BE ALLOWED AND MUST BE FILED WITHIN TEN BUSINESS OF THE CLERK'S CERTIFICATION OF SIGNATURE SUFFICIENCY AND AFTER ALLOWING FOR ADDITIONAL NEEDED SIGNATURES. RECERTIFICATION SHALL NOT EXCEED TWO WEEKS AND SHALL BE FINAL.

Colorado Secretary of State

RECEIVED
JUL 10 2018
11:00 A.M.
S. WARD

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

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

~~(a) "AFFORDABLE HOUSING" MEANS HOUSING AT LEAST THIRTY PERCENT LOWER IN SALES PRICE THAN AVERAGE COMPARABLE NEWLY CONSTRUCTED HOUSING WITHIN THE SAME LOCAL GOVERNMENT.~~

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

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

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

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

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

Proponents:

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

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

2017-2018 #4
Final (Resubmitted)

BE IT ENACTED BY THE PEOPLE OF THE STATE OF COLORADO:
ARTICLE XVIII OF THE CONSTITUTION OF THE STATE OF COLORADO IS AMENDED BY THE
ADDITION OF A NEW SECTION TO READ:

Section 17. Colorado growth limitation

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

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

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

(4) INITIATIVE AND REFERENDUM FOR THIS SECTION:

(a) SIGNATURE REQUIREMENTS FOR INITIATIVE AND REFERENDUM FOR ENACTING, REPEALING, OR AMENDING, PROPOSALS TO REGULATE THE GROWTH OF PRIVATELY OWNED RESIDENTIAL HOUSING FOR LOCAL GOVERNMENTS, WHETHER STATUTORY OR HOME RULE, SHALL BE FIVE PERCENT OF THE TOTAL NUMBER OF VOTERS PARTICIPATING IN THE MOST RECENT GENERAL ELECTION IN SUCH LOCAL GOVERNMENT. SUCH PROPOSALS ON A COUNTYWIDE BASIS SHALL INCLUDE THE SUMMATION OF SUCH REQUIREMENT FROM EACH LOCAL GOVERNMENT AND ANY PART OF A LOCAL GOVERNMENT NOT GOVERNED WITHIN SUCH COUNTY ACCUMULATED FOR THE TOTAL SIGNATURE REQUIREMENT AS DETERMINED BY THE COUNTY CLERK.

(b) PETITIONS FOR COUNTYWIDE PROPOSALS SHALL BE ISSUED BY THE COUNTY CLERK FOR ALL LOCAL GOVERNMENTS OR ANY PART OF SUCH WITHIN SUCH COUNTY WITH STATED MINIMUM SIGNATURE REQUIREMENTS FOR EACH SUCH ENTITY.

(c) ONLY ONE CHALLENGE FOR THE FORM AND CONTENT OF A PETITION SHALL BE ALLOWED AND MUST BE FILED WITHIN TEN BUSINESS DAYS FOLLOWING APPROVAL BY THE CLERK OF A LOCAL GOVERNMENT OR BY THE COUNTY CLERK IN THE CASE OF COUNTYWIDE PETITIONS AND BEFORE SIGNATURE GATHERING COMMENCES. AN EXPEDITED JUDICIAL DECISION FOR SUCH A CHALLENGE SHALL BE FINAL.

(d) ONLY ONE CHALLENGE FOR SIGNATURE SUFFICIENCY SHALL BE ALLOWED AND MUST BE FILED WITHIN TEN BUSINESS OF THE CLERK'S CERTIFICATION OF SIGNATURE SUFFICIENCY AND AFTER ALLOWING FOR ADDITIONAL NEEDED SIGNATURES. RECERTIFICATION SHALL NOT EXCEED TWO WEEKS AND SHALL BE FINAL.

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

Colorado Secretary of State

DEC 09 2018

11:00A.M.

RECEIVED

SWARD

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

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

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

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

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

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

Proponents:

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

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

Ballot Title Setting Board

Proposed Initiative 2017 2018 #4¹

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

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; limiting the growth of privately owned residential housing units in the city and counties of Broomfield and Denver, and in the counties of Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer, and Weld, to one percent annually for the years 2019 and 2020; permitting such growth limitations to be amended or repealed commencing in 2021 by initiative and referendum; and prohibiting the issuance of new permits for privately owned housing units by local governments located in whole or in part within such counties and such cities and counties until January 1, 2019.

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

Shall there be an amendment to the Colorado constitution 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; limiting the growth of privately owned residential housing units in the city and counties of Broomfield and Denver, and in the counties of Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer, and Weld, to one percent annually for the years 2019 and 2020; permitting such growth limitations to be amended or repealed commencing in 2021 by initiative and

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

referendum; and prohibiting the issuance of new permits for privately owned housing units by local governments located in whole or in part within such counties and such cities and counties until January 1, 2019?

Hearing December 21, 2016:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 2:45 p.m.

RECEIVED

DEC 28 2016

S. WARD

3:00 P.M.

COLORADO TITLE SETTING BOARD

Colorado Secretary of State

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION
CLAUSE FOR INITIATIVE 2017-2018 #4

MOTION FOR REHEARING

On behalf of D. Michael Kopp, registered elector of the State of Colorado, the undersigned counsel hereby submits this Motion for Rehearing for Initiative 2017-2018 #4 pursuant to C.R.S. § 1-40-107, and as grounds therefore states as follows:

I. INITIATIVE #4 IMPERMISSIBLY CONTAINS MULTIPLE SEPARATE AND DISTINCT SUBJECTS IN VIOLATION OF THE SINGLE-SUBJECT REQUIREMENT.

While the measure, in the abstract, concerns limiting housing growth, it contains multiple separate subjects, in violation of section 1 (5.5) of article V of the Colorado Constitution and section 1-40-106.5, C.R.S., that allow the proponents to strategically combine separate proposals into a single measure to alleviate their potential concern that one of the subjects might fail if presented to voters alone. *See In Re Title, Ballot Title, Submission Clause for 2011-2012 #3*, 274 P.3d 562, 566 (Colo. 2012). The following separate components of the measure are distinct and without a necessary or proper connection. *See, e.g., In re Title, Ballot Title and Submission Clause for 2007-2008 #17*, 172 P.3d 871, 878 (Colo. 2007).

1. While the majority of the measure's text provides the processes and procedures through which local governments may limit housing growth, subsection (2) of the amended measure is a separate subject that directly imposes certain housing growth limits, rather than processes and procedures, on specific Front Range counties and city and counties.
2. The measure includes a fundamental change to the constitutional home rule relationship in Colorado by giving counties authority over home rule municipalities, which in essence alters the home rule provisions in article XX of the Colorado Constitution.
3. The measure contains changes to the election process as they pertain to limiting housing growth by permitting only one challenge on the petition and only one challenge for sufficiency of signatures, which alters the petition challenge and protest processes contained in article 40 of title 1, C.R.S. The changes, except for the one person who

challenges the petition or signatures, abrogate all others' rights to challenge the petitions. Therefore, these changes are such a departure from the current petition protest processes that they constitute separate subjects.

II. THE TITLE DOES NOT ADEQUATELY DESCRIBE THE MEASURE.

1. Because the measure's one percent limit on housing growth on specific Front Range counties and city and counties is the predominant feature of the measure, it should appear upfront in the title and before the initiative process changes.

III. THE TITLE AS DRAFTED IS AMBIGUOUS.

1. The title as drafted is impermissibly ambiguous because:
 - a. It is unclear in the title whether the phrase describing the prohibition on the issuance of new permits for privately owned housing units by local governments refers to: (i) the Front Range counties and city and counties in subsection (2); or (ii) all counties and city and counties in Colorado.
 - b. Highlighting the title's ambiguity, it likewise is unclear whether subsection (3) in the amended measure (subsection (4) of the original measure), which concerns prohibitions on permits to build new privately owned residential housing refers to: (i) the Front Range counties and city and counties in subsection (2); or (ii) all counties and city and counties in Colorado.

Therefore, because the title and measure use the phrase "such cities and counties" without clarity as to the specific cities and counties they are referring to, the title is ambiguous and must be redrafted.

IV. THE ABSTRACT IS MISLEADING.

1. The abstract as drafted is misleading because while the abstract states that "[l]imits on housing permits will also impact the distribution of construction employment, retail trade, and population within Colorado," this language is vague and fails to adequately indicate that the measure's housing growth limitations will necessarily negatively affect construction and retail businesses and employees in the Front Range counties and city and counties where growth would be limited.

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

Respectfully submitted this 28th day of December, 2016.

/s/ Jason R. Dunn

Jason R. Dunn
David Meschke
Brownstein Hyatt Farber Schreck LLP
410 17th Street, #2200
Denver, Colorado 80202
(303) 223-1100
(303) 223-0914
jdunn@bhfs.com
dmeschke@bhfs.com

Attorneys for Objector D. Michael Kopp

Address of Objector:
One Sherman Place
140 East 19th Avenue, Suite 400
Denver, CO 80203

0135850001\15322532 2

RECEIVED

DEC 28 2016

S. WARD
4:15 P.M.

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Colorado Secretary of State

Scott E. Smith, Objector

vs.

Dan Hayes and Julianne Page, Proponents.

**MOTION FOR REHEARING ON INITIATIVE 2017-2018 #4
("Limit on Local Housing Growth")**

Scott E. Smith, a registered elector of the State of Colorado, through legal counsel, Recht Kornfeld P.C., objects to the Title Board's title and ballot title and submission clause set for Initiative 2017-18 #4 ("Limit on Local Housing Growth"). The Board set the following ballot title and submission clause for Initiative 2017-18 #4 on December 21, 2016:

Shall there be 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; limiting the growth of privately owned residential housing units in the city and counties of Broomfield and Denver, and in the counties of Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer, and Weld, to one percent annually for the years 2019 and 2020; permitting such growth limitations to be amended or repealed commencing in 2021 by initiative and referendum; and prohibiting the issuance of new permits for privately owned housing units by local governments located in whole or in part within such counties and such cities and counties until January 1, 2019?

A. Initiative #4 contains multiple subjects, contrary to Colo. Const., art. V, sec. 1(5.5).

Initiative #4 ("#4") violates the single subject requirement for initiatives. *In re Title for Initiative 2001-2002 #43*, 46 P.3d 438, 448 (Colo. 2002) (changing both petitioning procedures and substantive rights addressing matters of local concern violates single subject requirement).

1. #4 redirects the people's grant of legislative authority by creating the first and only constitutional right of initiative at the county-wide level.
2. #4 restricts traditional municipal powers (including the right of municipal initiatives, granted by Colo. Const., art. V, § 1(9)) by transferring certain binding power over growth to county voters.

3. By setting statewide limits, #4 removes from local government the power to determine the amount and timing of residential housing growth.
4. #4 combines a statewide process for local growth limit initiatives and referenda with local limits on residential housing growth for certain named counties.
5. #4 establishes new procedures and standards for a certain class of initiatives (those dealing with housing growth).
6. #4 changes home rule control over the conduct of certain municipal elections.
7. #4 sets a two-year (2019-2021) mandatory growth limit for 10 named counties.
8. #4 bans the right of initiative dealing with growth in the 10 named counties.
9. #4 limits the applicability of state statutes on the question of local growth.

B. Initiative #4 contains elements that are not accurately described in the ballot title.

1. The title fails to state the county, by initiative, “may... uniformly” restrict growth within the county without requiring any such restriction to be uniform.
2. The title fails to state that, for two years (2019-2021), there is no right of initiative or referendum on growth limits in the 10 named counties.
3. The title fails to state the starting date of the moratorium on new permit issuance, as it runs from “declaration of voter approval” until Jan. 1, 2019.
4. The title fails to state which petitioning procedures (signature requirements, petition form challenges, signature sufficiency) are affected by this initiative.

C. Initiative #4’s fiscal impact statement and abstract are misleading or prejudicial and are contrary to C.R.S. §§ 1-40-105.5, -107(1)(a)(II)(B).

1. The fiscal impact statement fails to state “whether there is a fiscal impact for the initiated measure.” C.R.S. § 1-40-105.5(2)(c)(II).
2. The abstract’s statement of “Local government revenue and spending” does not provide any current estimate or projected estimates of such revenue and spending.
3. The abstract’s statement, “Limits on housing permits will also impact the distribution of construction employment, retail trade, and population within Colorado”, does not materially inform voters of any actual economic impact of the measure.
4. The statement that “local governments may receive additional property tax revenue” is conjecture and fails to call to voters’ attention the spending and revenue limits of TABOR, Colo. Const., art. X, § 20.

D. Initiative #4 does not comply with C.R.S. §§ 1-40-105.5(3), -107(1)(a)(II)(C).

1. The abstract does not contain an estimate of the amount of any state and local government recurring expenditures. C.R.S. § 1-40-105.5(3)(a).
2. The abstract does not include a “statement of the measure’s economic benefits for all Coloradans” as required by C.R.S. § 1-40-105.5(3)(b).
3. The abstract does not contain an “estimate of the amount of any state and local fiscal liabilities if the measure is enacted.” C.R.S. § 1-40-105.5(3)(c).

WHEREFORE, the decision to set such titles should be reversed, due to the single subject violations addressed herein, and further, such titles as well as the fiscal impact statement and abstract should be revised to account for misstatements of Initiative #4 as specified herein.

RESPECTFULLY SUBMITTED this 28th day of December, 2016.

RECHT KORNFIELD, P.C.


Mark Grueskin
1600 Stout Street, Suite 1400
Denver, CO 80202
Phone: 303-573-1900
Email: mark@rklawpc.com

Objector's Address:

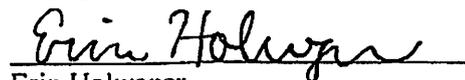
1172 Greenland Forest Dr.
Monument, CO 80132

CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the MOTION FOR REHEARING ON INITIATIVE 2017-2018 #4 was sent this day, December 28, 2016 via email and first class mail, United States Postal Service, to proponents at:

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

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


Erin Holweger

Ballot Title Setting Board

Proposed Initiative 2017 2018 #4¹

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

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 counties and such cities and counties until January 1, 2019, 2) limiting the growth of privately owned residential housing units to one percent annually starting in 2019, and 3) permitting the one percent growth limitation to be amended or repealed by initiative and referendum commencing in 2021.

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

Shall there be 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 counties and such cities and counties until January 1, 2019, 2) limiting the growth of

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

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?

Hearing December 21, 2016:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 2:45 p.m.

Rehearing January 4, 2017:

Motions for Rehearing denied except to the extent that the Board made changes to the titles.

Hearing adjourned 3:50 p.m.

DATE FILED: January 31, 2017 7:12 PM

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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1 P R O C E E D I N G S

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

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

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

22 MR. HAYES: Daniel Hayes, Golden, Colorado.

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

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

1 submitted?

2 MR. HAYES: Yes, we have.

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

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

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

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

13 CHAIRMAN STAIERT: Which he?

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

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

18 MR. HAYES: Yes.

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

21 (Unidentified voice in the distant background.)

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

25 Mr. Dunn, do you want to go first?

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

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

10 CHAIRMAN STAIERT: That would be fine.

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

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

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

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

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

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

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

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

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

25 A third subject I think is the fundamental change

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

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

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

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

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

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

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

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

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

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

1 housing growth under this measure.

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

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

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

20 CHAIRMAN STAIERT: Does anyone have any
21 questions?

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

1 MR. DUNN: Is that a hint?

2 MR. ROPER: No.

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

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

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

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

25 MR. ROPER: Thank you.

1 CHAIRMAN STAIERT: Do you have any questions?

2 MS. EUBANKS: Sure. Mr. Dunn, are you aware that
3 the Proponent, Mr. Hayes, submitted a proposal back in the
4 2005-2006 cycle that was very similar to this measure, at
5 least in terms of the provisions in Subsection (1) and (2)
6 in terms of the limits that was -- the Title Board set a
7 title, there was a motion for rehearing, it went up to the
8 supreme court, and the supreme court upheld the title set
9 by the Title Board?

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

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

13 MR. DUNN: Right.

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

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

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

22 MS. EUBANKS: It's not --

23 MR. DUNN: -- is not included.

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

1 established in Subsection (1) --

2 MR. DUNN: Right.

3 MS. EUBANKS: -- for other local governments to
4 impose growth limits versus the specific one that's set
5 forth in Subsection (2), those provisions are fairly
6 similar. And so in terms of the arguments you made based
7 on those provisions, I was wondering --

8 MR. DUNN: Right. And I don't recall if the
9 original measure included the second sentence of Section
10 (1) regarding the county's right to impose, you know, sort
11 of the home rule provision, as I refer to it. I don't
12 think that did, but I could be wrong about that.

13 MS. EUBANKS: And it did allow --

14 MR. DUNN: Home rule.

15 MS. EUBANKS: Yeah, per county to impose a
16 countywide --

17 MR. DUNN: So I'd have to go back and compare the
18 two.

19 MS. EUBANKS: Okay. That's fine. And I'll ask
20 Mr. Grueskin the same question.

21 MR. DUNN: Okay. Is there nothing else? Thanks.

22 CHAIRMAN STAIERT: All right.

23 MR. GRUESKIN: Madam Chair, members of the Title
24 Board, my name is Mark Grueskin. I'm appearing on behalf
25 of the Objector, Mr. Smith. And I'd be happy to review

1 the single subject challenges that we made in our motion
2 for rehearing. I'd likewise be happy to answer the
3 questions that I believe are forthcoming.

4 Let me first, though, say that the suggestion --
5 the question that was asked was is there any specific
6 provision in Article XX that is implicated by this
7 measure. And I'd suggest to you there are two.

8 Number one, Subsection (d) gives municipalities,
9 home rule municipalities, total control over their
10 election process. That control is, by this measure,
11 remote as to this class of measures. And in fact, it
12 becomes -- those elections can't have any effect in light
13 of the preeminence of a countywide decision. Therefore,
14 there is that specific provision.

15 In addition, the decision in Initiative 2001-2002
16 No. 43 identifies land use and zoning as protected
17 decisions for home rule municipalities under Article XX.
18 And therefore, without a specific provision, nonetheless,
19 it is clear that Article XX reserves that set of decision
20 making for home rule municipality. It is yanked away from
21 home rule municipalities by this measure.

22 So let me talk a little bit about the various
23 subjects. Mr. Dunn is correct that there are a set of
24 procedures that relate to a certain category of
25 initiatives that are dictated here. And they are fairly

1 exhaustive in Subsection (4), but that is not the only set
2 of issues, subjects that are addressed here.

3 Number 1, there is no county right of initiative.
4 It doesn't exist, as the board knows well. That is
5 created here for purposes of addressing growth, specific
6 growth issues. That is a change in the fundamental nature
7 of the county as a political subdivision of the state,
8 which has only that authority that is granted to it by the
9 state, and therefore, that is its own subject. We are
10 giving law making authority to countywide electorates in
11 order to bind all of the municipalities, notwithstanding
12 their home rule or statutory nature.

13 That is a fundamental shift in what and how
14 government operates at the county level. And the Colorado
15 appellate courts have rejected the notion that, except as
16 created by the general assembly, there is such a thing as
17 a county initiative. And therefore, to the extent that it
18 is now part of the organic law of the Constitution, that
19 is its own subject.

20 Secondly, to the extent that there is a transfer
21 of authority from municipal electorates to county
22 electorates, that is a fundamental change. And as
23 suggested earlier, that implicates Article XX, but it
24 isn't solely the issue. The question is whether or not
25 the right of an initiative as protected by Article V,

1 Section 1, Paragraph 9, which is all encompassing, having
2 had that now removed, that all-encompassing power is taken
3 away from municipal voters, whether or not that is, in
4 fact, a second subject. And I could argue to you that, in
5 fact, it is.

6 As I indicated, and as is implied by the No. 43
7 decision, the whole notion of growth, which is a function
8 of land use and zoning decisions, has always been reserved
9 for municipal voters. It's their community.

10 Take Arapahoe County, for example. Now, the
11 citizens of Aurora have a say in the type of growth that's
12 going to occur in Littleton. And you can go on and on in
13 terms of the various counties that are going -- where
14 countywide voters are going to change the decision making,
15 the growth patterns, the economics of municipalities that
16 have literally no geographic nexus to them other than the
17 fact that they're within the same county.

18 As a function of that, the fact that residential
19 housing growth is being shifted because either
20 it is being decided at a county level or it's subject to
21 the new statewide limit as set in this measure, suggests
22 that there has been a change in the power and the
23 authority of local electorates.

24 As we point out in our motion, in addition to
25 that, there's a statewide process for these initiatives

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 MS. EUBANKS STAIERT: Thank you very much.

6 MR. GRUESKIN: Sure. Thank you.

7 CHAIRMAN STAIERT: Do you want to respond?

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

11 First of all, the countywide measure. I've lived
12 in Jefferson County virtually all my life. The only way
13 to approach growth is countywide. And in Arvada they
14 passed a 10 percent -- you have to get 10 percent of the
15 signatures of all their registered voters, which is about
16 12-, 13,000. It's almost impossible. I don't think
17 they've had a single initiative since they passed that.
18 They're made up of -- I know most of their city council
19 are lawyers that have worked for various home builders.
20 They do what they please. Virtually all that growth in
21 the Rocky Flats area, there's about 10,000 houses coming
22 out of the ground Arvada's got going, it's costing these
23 county residents --

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

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

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

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

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

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

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

11 CHAIRMAN STAIERT: Okay.

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

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

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

1 MR. DUNN: All right.

2 CHAIRMAN STAIERT: Point taken.

3 Any questions?

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

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

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

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

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

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

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

11 CHAIRMAN STAIERT: Do you have any comments?

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

16 Now, unfortunately, I'm not familiar with the
17 2005-2006 case that Sharon brought up. So potentially if
18 I were to read that, I would change my view. But since
19 there would be a majority anyway --

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

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

1 before us today.

2 MR. ROPER: Well, I would grant the motion for
3 rehearing. I'm not too worried about not being familiar
4 with that case, given that there's a majority on the other
5 side.

6 So, and I agree with Suzanne, there could be some
7 due process concerns with respect to the challenges to the
8 petition's sufficiency, but I don't think that
9 independently creates a second subject.

10 Again, my concern is with the -- the difference
11 between Subsections (1) and (2). So I would grant it.

12 CHAIRMAN STAIERT: Okay. Do you want to go ahead
13 and do the motion then?

14 MS. EUBANKS: Sure.

15 CHAIRMAN STAIERT: For that part, and then we'll
16 move onto the next.

17 MS. EUBANKS: Right.

18 In regard to the motions for rehearing on No. 4,
19 in regard to the single subject, I would move that we deny
20 the motions for rehearing on those grounds.

21 CHAIRMAN STAIERT: Second.

22 All those in favor, aye.

23 CHAIRMAN STAIERT: Aye.

24 MS. EUBANKS: Aye.

25 CHAIRMAN STAIERT: Opposed?

1 MR. ROPER: Nay.

2 CHAIRMAN STAIERT: So that takes us to the title.
3 And Mr. Dunn, did you have an order or -- is Mr. Grueskin
4 doing that one? Mr. Grueskin, do you want to ...

5 MR. GRUESKIN: Thank you, Madam Chair. I
6 apologize, I didn't realize that Mr. Dunn was pointing at
7 me.

8 CHAIRMAN STAIERT: It was more of a shrug.

9 MR. GRUESKIN: I think that the point that we
10 would make as to -- and can we limit this conversation
11 just to the accuracy of title? I know that --

12 CHAIRMAN STAIERT: Sure.

13 MR. GRUESKIN: -- you've got staff here to
14 address the fiscal impact statement.

15 The measure itself says that the county may
16 uniformly restrict growth within the county, but that,
17 obviously, is permissive rather than mandatory. And it
18 would seem to me that if it is permissive, then to the
19 extent that the county may uniformly restrict growth, it
20 may also non-uniformly restrict growth, and that the title
21 should indicate that there is no requirement that the
22 limitations on growth be countywide or be applicable by
23 jurisdiction or anything else. It could be subject to
24 the -- either the political whim or some sort of specific
25 growth plan or any other element.

1 And therefore, it seems to me that the fact that
2 this is wildly open-ended in terms of how the county is
3 going to apply growth limits, ought to be reflected in the
4 title. I would think that that would be relevant for
5 voters.

6 I would think that the title as it exists doesn't
7 suggest that. It simply says the county voters are
8 permitted to uniformly restrict growth.

9 CHAIRMAN STAIERT: You don't think that's covered
10 in the next sentence when it says including all or parts
11 of local governments?

12 MR. GRUESKIN: Honestly, I know that the board
13 struggled as to how to include that phrase in that
14 sentence. I don't really know what that means because it
15 is qualified or it seems to qualify uniformly within the
16 county.

17 And I thought actually that what that phrase
18 referred to were local governments that spanned into
19 another county. And so if that's not what it means, then
20 I'd say no, it doesn't indicate that, because that was not
21 what I took from that phrase, either based upon reading
22 the initiative or upon hearing the Proponent speak at the
23 first Title Board meeting. So no, I don't believe that
24 that gets you there.

25 MS. EUBANKS: Does the word permitting -- I mean

1 in terms of that it's permitting county voters, it's not
2 requiring, it's permitting, which seems permissive.

3 MR. GRUESKIN: Yes, but that seems to qualify
4 whether or not they use the right of initiative or
5 referendum, rather than whether or not the use of the
6 referendum is uniform or non-uniform within the county.

7 CHAIRMAN STAIERT: What if it was uniformly
8 within the county or parts of local -- well --

9 MS. EUBANKS: In terms of that statement in
10 Subsection (1), I mean right now, as I understand it,
11 counties fall within the general purview of the first
12 sentence of Subsection (1), where it talks about the
13 electors of any of these local governments reserve the
14 right to limit housing growth within their boundaries.
15 And then I would argue that the second sentence, because
16 usually a county would only be voting on things within
17 unincorporated portions of the county. The second
18 sentence allows them to impose it countywide, throughout
19 all the local governments, including municipalities. And
20 that the distinction between the first sentence and the
21 second sentence, and that -- I don't view the second
22 sentence establishing the right for the county to do
23 within unincorporated -- I mean it's taking the authority
24 granted in the first sentence a step further.

25 And that's -- and I thought that's what we were

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

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

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

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

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

1 doesn't communicate that.

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

6 MR. GRUESKIN: Or --

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

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

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

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

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

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

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

10 MS. EUBANKS: Why does it mean that?

11 MR. GRUESKIN: I'm sorry.

12 MS. EUBANKS: Why does it mean that?

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

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

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

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

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

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

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

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

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

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

1 know.

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

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

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

18 MS. EUBANKS: Right.

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

25 CHAIRMAN STAIERT: What if we just took out the

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

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

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

15 CHAIRMAN STAIERT: Well, I think --

16 MS. EUBANKS: (Inaudible).

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

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

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

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

5 CHAIRMAN STAIERT: Yeah, right.

6 MR. GRUESKIN: I mean --

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

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

15 CHAIRMAN STAIERT: Yeah.

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

19 CHAIRMAN STAIERT: Right.

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

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

1 to non-uniformly limit housing growth across.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 That's just how I see it.

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

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

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

10 MR. DUNN: Jason Dunn again. So just on that
11 point, since no one else raised it, maybe I'm missing
12 something, but in the measure itself, that clause says the
13 right is further reserved on a countywide basis, whereby
14 electors throughout a county may elect to limit housing
15 growth uniformly in all local governments and any part of
16 such. And I think that's conveyed somewhat in the words
17 as parts of local government in the measure. But I agree
18 with Mr. Grueskin, and I incorporate his argument into
19 ours.

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

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

5 CHAIRMAN STAIERT: It is.

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

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

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

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

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

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

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

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

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

19 MS. EUBANKS: I think it matters a lot.

20 MR. DUNN: Yeah, I agree.

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

25 MR. DUNN: I guess the question is whether the

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

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

12 Did you have a comment?

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

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

19 MR. HAYES: Of the county?

20 CHAIRMAN STAIERT: Yes.

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

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

1 you do the east half and not the west half?

2 MR. HAYES: I see.

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

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

14 MR. ROPER: Yeah, I agree with Sharon.

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

16 All right. What have you got?

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

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

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

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

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

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

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

24 CHAIRMAN STAIERT: Permitting.

25 MS. EUBANKS: -- that it establishes procedural

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

3 CHAIRMAN STAIERT: Right.

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

7 CHAIRMAN STAIERT: Right.

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

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

13 MR. DUNN: Unfortunately, yes.

14 CHAIRMAN STAIERT: Okay. Go ahead.

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

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

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

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

5 CHAIRMAN STAIERT: Go ahead.

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

8 MR. DUNN: Correct.

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

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

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

13 MR. DUNN: Right. So --

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

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

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

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

25 More substantively, you know, as we said in the

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

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

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

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

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

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

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

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

15 MS. EUBANKS: Yes.

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

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

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

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

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

14 MS. EUBANKS: Okay.

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

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

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

3 MR. DUNN: The only other point I want to make is
4 the -- as Mr. Grueskin talked about, the absolute
5 prohibition on growth in the period prior to January 1,
6 2019, and I think that's something that needs to be
7 mentioned in the title.

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

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

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

1 MS. EUBANKS: I'm fine with that.

2 CHAIRMAN STAIERT: -- tie it back a little.

3 MR. DUNN: I think the right of initiative after
4 2020 is sort of the exception to the rule that one percent
5 growth is hereby --

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

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

13 MR. ROPER: Right.

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

19 CHAIRMAN STAIERT: Sure.

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

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

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

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

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

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

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

4 MR. DUNN: Exactly.

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

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

15 MR. ROPER: Yeah, I agree. That concept, I'm
16 unsure, is captured in No. 2 because it says you can amend
17 or repeal the limitations. It doesn't make clear, as I
18 would want to, that those limitations stay in place after
19 2020, unless they're amended or repealed by initiative or
20 referendum.

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

1 about the '19 and '20.

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

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

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

13 CHAIRMAN STAIERT: Right.

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

17 CHAIRMAN STAIERT: Yeah.

18 MS. EUBANKS: And that can only happen after
19 2020.

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

25 MS. EUBANKS: Are we driving you crazy?

1 CHAIRMAN STAIERT: No. He's following me.

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

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

6 MR. ROPER: Yeah.

7 CHAIRMAN STAIERT: Yeah.

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

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

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

13 CHAIRMAN STAIERT: Yeah.

14 MS. EUBANKS: But perhaps --

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

16 MS. EUBANKS: The 2.

17 CHAIRMAN STAIERT: Yeah, 3.

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

20 CHAIRMAN STAIERT: Limiting growth, but --

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

23 MR. DUNN: Permitting the one percent growth
24 limitation.

25 MS. EUBANKS: Yes. Permitting the --

1 CHAIRMAN STAIERT: One percent.

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

5 CHAIRMAN STAIERT: Yeah.

6 MR. DUNN: To the initiative or referendum.

7 CHAIRMAN STAIERT: Oh, yeah.

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

10 MR. ROPER: Yeah.

11 CHAIRMAN STAIERT: Yeah.

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

18 So does that help?

19 CHAIRMAN STAIERT: Do you have any comment?

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

25 And to put it first, people are going to read

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

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

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

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

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

17 MR. ROPER: I agree.

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

20 MR. GRUESKIN: Oh, absolutely.

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

1 to see and read.

2 CHAIRMAN STAIERT: Okay.

3 MS. EUBANKS: I'd be fine with that.

4 CHAIRMAN STAIERT: Yeah.

5 MR. ROPER: So move "commencing in 2021"?

6 CHAIRMAN STAIERT: Yeah.

7 MS. EUBANKS: Repealed by initiative and
8 referendum.

9 CHAIRMAN STAIERT: All right. Have you got
10 anything else or ...

11 MS. EUBANKS: I know we haven't addressed the
12 concern raised about specifying sort of both end of time
13 period for the can't issue any permits at all, but I just
14 don't know if voters really understand the nuance of when
15 the vote's declared, you know, when the Governor signs the
16 big version. I just -- I mean, obviously, it can't be --
17 it wouldn't be right when the voters approve it. I mean
18 it's something shorter than that. But I just don't know
19 if that's important to include.

20 And I know in the one that was done back in
21 2005-2006, it basically just said as of, you know, until
22 this date, because it has a similar feature --

23 CHAIRMAN STAIERT: Right.

24 MS. EUBANKS: -- where no permits could be
25 issued.

1 So I'm not inclined to make that change.

2 CHAIRMAN STAIERT: Yeah, I'm not either.

3 MR. ROPER: Suzanne, just for my comfort, what --
4 if this were approved by the voters in the 2018 ballot,
5 what would that date likely be? How long from the date of
6 the election until it's --

7 MS. EUBANKS: It depends.

8 CHAIRMAN STAIERT: It depends if there's a
9 recount.

10 MR. ROPER: Declaration of voter approval.

11 CHAIRMAN STAIERT: I think it would be 30 days
12 typically, but if there's a -- you know?

13 MS. EUBANKS: Yeah, I know.

14 CHAIRMAN STAIERT: If there's a recount --

15 MS. EUBANKS: It was sometime last week, I think,
16 that the Governor signed a declaration on Amendment 71.

17 CHAIRMAN STAIERT: Yeah.

18 MS. EUBANKS: I mean there's different dates. I
19 mean, he signed the one for the medical assisted suicide.

20 CHAIRMAN STAIERT: Yeah, he did that one a couple
21 weeks ago.

22 MS. EUBANKS: Yeah, he did that earlier. I mean
23 so it just all --

24 MR. ROPER: I agree. I don't think there's a
25 need to address the start date.

1 MS. EUBANKS: Yeah. But those were -- all right.

2 Do you want to --

3 CHAIRMAN STAIERT: Do you want me to read it, or
4 do you want to move the changes?

5 MR. ROPER: Do you want to -- can you show us
6 in ...

7 CHAIRMAN STAIERT: Why don't I read it while
8 we're sitting.

9 An amendment to the Colorado Constitution
10 concerning limitations on the growth of housing, and in
11 connection therewith, permitting the electors of every
12 city, town, city and county, or county to limit housing
13 growth by initiative and referendum, permitting county
14 voters by initiative and referendum to limit housing
15 growth uniformly within the county, including all or parts
16 of local governments within the county, establishing
17 procedural requirements for initiatives for local
18 governments, whether statutory or home rule, concerning
19 limits on housing growth, and for the City and Counties of
20 Broomfield and Denver and in the Counties of Adams,
21 Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer,
22 and Weld, 1, prohibiting the issuance of new permits for
23 privately-owned housing units by local governments
24 located, in whole or in part, within such cities and
25 counties until January 1, 2019; 2, limiting the growth of

1 privately-owned residential housing units to one percent
2 annually, starting in 2019; and 3, permitting the one
3 percent growth limitation to be amended or repealed by
4 initiative and referendum commencing in 2021.

5 MS. EUBANKS: Looking at the changes, I think I
6 could maybe make a motion. I will try.

7 Because I think it should be that I would move
8 that we deny -- yeah -- the motions for rehearing in terms
9 of Mr. Dunn's arguments in Roman II and III and
10 Mr. Grueskin's arguments in E, that we deny them, other
11 than to the extent we've modified the title as shown on
12 the screen.

13 MR. ROPER: Second.

14 CHAIRMAN STAIERT: All those in favor?

15 ALL BOARD MEMBERS: Aye.

16 CHAIRMAN STAIERT: Okay. That takes us to the
17 fiscal impact. Who wants to go first on that one?

18 MR. DUNN: All right. Jason Dunn again. So
19 Mr. Grueskin has, I think, a little bit more intricate
20 arguments that we will incorporate into ours as well.
21 Ours are more overarching, I think, in that it's -- the
22 abstract -- I do think the abstract needs to actually
23 contain a number, an estimate, or the fiscal impact
24 statement as well.

25 But more specifically, I think what's important

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

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

18 CHAIRMAN STAIERT: Okay.

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

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

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

3 CHAIRMAN STAIERT: Mr. Grueskin.

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

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

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

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

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

1 will restrict property tax growth.

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

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

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

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

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

25 Houses pay, according to the Gatlinger amendment,

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

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

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

13 CHAIRMAN STAIERT: I mean do you agree with this?

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

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

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

20 CHAIRMAN STAIERT: Okay. All right. Thanks.

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

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

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

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

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

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

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

25 But you know, I think the challenge for us was

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

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

8 CHAIRMAN STAIERT: Any questions?

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

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

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

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

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

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

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

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

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

1 the abstract must include a very specific list of items.

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

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

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

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

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

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

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

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

9 MS. EUBANKS: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 MR. HARRY: Right.

20 MS. EUBANKS: Okay. Thank you.

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

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

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

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

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

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

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

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

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

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

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

19 I think there's significance to the fact that
20 3(b) only talks about economic benefits. And so I think
21 that the heading on that paragraph should be changed, and
22 I think that the second sentence should be removed. I
23 know that both Mr. Grueskin and Mr. Dunn in their motions
24 for rehearing made arguments that sort of the negative
25 impact needed to be clarified.

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

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

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

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

1 be imposed.

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

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

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

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

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

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

23 MS. EUBANKS: On the abstract?

24 CHAIRMAN STAIERT: On the abstract.

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

1 the motions for rehearing with respect to the abstract.

2 CHAIRMAN STAIERT: Second.

3 All those in favor?

4 CHAIRMAN STAIERT: Aye.

5 MR. ROPER: Aye.

6 CHAIRMAN STAIERT: Opposed?

7 MS. EUBANKS: No.

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

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

12 (The hearing was concluded at approximately
13 3:50 p.m., January 4, 2017.)

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

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