

<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 #169 (“Compliance with Federal  Immigration Law”)</p> <p><b>Petitioner: Kyle Huelsman</b></p> <p>v.</p> <p><b>Respondents: Floyd Trujillo and Thomas  Tancredo</b></p> <p>and</p> <p><b>Title Board: SUZANNE STAIERT;  JASON GELENDER; and GLENN  ROPER</b></p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorney for Petitioner:  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: <a href="mailto:mark@rklawpc.com">mark@rklawpc.com</a></p>	<p>Case No. _____</p>
<p style="text-align: center;"><b>PETITION FOR REVIEW OF FINAL ACTION OF  BALLOT TITLE SETTING BOARD CONCERNING  PROPOSED INITIATIVE 2017-2018 #169  (“COMPLIANCE WITH FEDERAL IMMIGRATION LAW”)</b></p>	

Kyle Huelsman (“Petitioner”), a registered elector of the State of Colorado, through undersigned counsel, respectfully petitions this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Initiative 2017-2018 #169 (“Compliance with Federal Immigration Law”).

## **STATEMENT OF THE CASE**

### **A. Procedural History of Proposed Initiative 2017-2018 #169**

Floyd Trujillo and Thomas Tancredo (hereafter “Proponents”) proposed Initiative 2017-2018 #169 (the “Proposed Initiative”). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, the Proponents submitted final versions of the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board, of which the Secretary or his designee is a member.

A Title Board hearing was held on April 18, 2018, at which time a title was set for 2017-2018 #169. On April 25, 2018, Petitioner Kyle Huelsman filed a Motion for Rehearing, alleging that #169 contained multiple subjects, the title set was inaccurate and misleading, and the fiscal abstract failed to provide needed information to voters. The rehearing was held on April 26, 2018, at which time the Title Board denied the Motion for Rehearing.

## **B. Jurisdiction**

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

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

## **GROUND FOR APPEAL**

The titles set by the Title Board violate the legal requirements imposed on the Board to comply with the single subject requirement in Article V, §1(5.5) of the Colorado Constitution, and also failed to set an accurate and fair ballot title as required by Colorado statute. The following is an advisory list of issues to be addressed in Petitioner's brief:

1. Whether Initiative #169 violates the single subject requirement, as state and local cooperation in the “enforcement” of “federal immigration laws” is too broad of a topic to constitute a single subject for a measure that both: (a) mandates all jurisdictions in the state engage in an information exchange on the lawful or unlawful immigration status or citizenship of all persons in Colorado; and (b) prohibits any jurisdiction from taking an act to facilitate or encourage the physical harboring of a person who is in the state without legal authorization.
2. Whether the ballot title set for Initiative #169 is misleading by its failure to define, identify, or at least indicate the breadth of covered “jurisdictions,” which are repetitively and inaccurately described as “state and local government” in the title.

### **PRAYER FOR RELIEF**

Petitioner respectfully requests that, after consideration of the parties’ briefs, this Court determine that the Title Board lacked jurisdiction to set titles for the Proposed Initiative and that the Board failed to revise the ballot title to account for the argument raised by Petitioner. Therefore, the Board should be ordered to return this measure to the Proponents, in light of the initiative’s failure to comply

with the single subject requirement in the Colorado Constitution, or should reconvene to cure the errors it included in the ballot title and set an accurate and fair ballot title.

Respectfully submitted this 3<sup>rd</sup> day of May, 2018.

*/s/ Mark Grueskin*

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Mark G. Grueskin, #14621  
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Facsimile: 303-446-9400  
Email: [mark@rklawpc.com](mailto:mark@rklawpc.com)

**ATTORNEY FOR PETITIONER**

**CERTIFICATE OF SERVICE**

I, Erin Holweger, hereby affirm that a true and accurate copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2017-2018 #169 (“COMPLIANCE WITH FEDERAL IMMIGRATION LAW”)** was sent this day, May 3, 2018, via Colorado Courts Electronic Filing to Counsel for the Title Board and sent via overnight delivery to the Proponents at:

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

Floyd Trujillo  
11232 W. Mesa Run  
Littleton, CO 80125

Thomas Tancredo  
15342 W. Iliff Dr.  
Lakewood, CO 80228

*/s Erin Holweger* \_\_\_\_\_

DATE FILED: May 3, 2018 4:50 PM



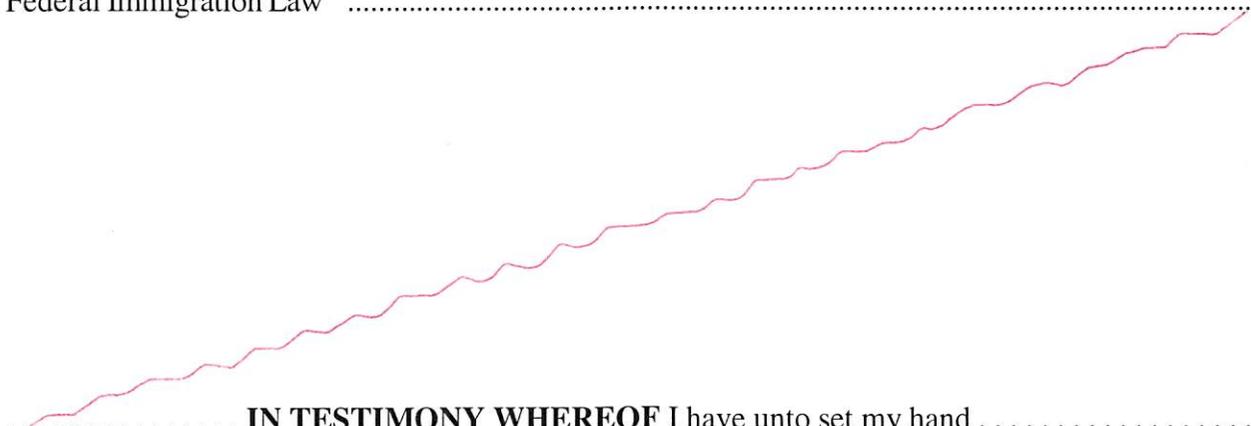
# STATE OF COLORADO

DEPARTMENT OF  
STATE

## CERTIFICATE

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

the attached are true and exact copies of the filed text, fiscal impact abstract, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2017-2018 #169 'Compliance with Federal Immigration Law'" .....



..... **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 26<sup>th</sup> day of April, 2018.

*Wayne W. Williams*  
SECRETARY OF STATE



2017-2018 #169

Colorado Secretary of State

**Be it Enacted by the People of the State of Colorado.**

**SECTION 1.** The short title of this act is the "Public Safety Protection against Sanctuary Policies Act".

**SECTION 2.** In Colorado Revised Statutes, add part 21 to article 33.5 of title 24 as follows:

**PART 21**

**PROHIBITION ON SANCTUARY POLICIES IN VIOLATION OF FEDERAL LAW**

**24-33.5-2101. Legislative declaration.** (1) THE PEOPLE OF COLORADO FIND AND DECLARE THAT IT IS NECESSARY TO ENSURE CONSISTENCY AND FAIRNESS IN THE APPLICATION OF THIS PART 21 THROUGHOUT THE STATE AND THAT, THEREFORE, EXCEPT AS OTHERWISE SPECIFIED IN THIS PART 21, ADDRESSING SANCTUARY POLICIES AS OUTLINED IN THIS PART 21 IS A MATTER OF STATEWIDE CONCERN.

(2) THE PEOPLE OF COLORADO FIND AND DECLARE THAT:

(a) ALTHOUGH IMMIGRATION IS MAINLY A QUESTION OF FEDERAL LAW, THE EFFECTS AND COST TO TAXPAYERS OF ILLEGAL IMMIGRATION ARE FELT BY PERSONS THROUGHOUT THE COUNTRY AND IN COLORADO.

(b) TO PROTECT THE SECURITY, SAFETY, AND WELL-BEING OF PERSONS WITHIN THE UNITED STATES, FEDERAL LAWS PROHIBIT STATE AND LOCAL GOVERNMENTS FROM RESTRICTING OR OBSTRUCTING THE EXCHANGE OF INFORMATION WITH FEDERAL AUTHORITIES, OR FROM PUNISHING PERSONS FOR COOPERATING OR EXCHANGING INFORMATION.

(c) STATE AND LOCAL GOVERNMENTS THAT VIOLATE FEDERAL IMMIGRATION LAWS RISK LOSING FEDERAL GRANTS OR ELIGIBILITY FOR FEDERAL GRANTS.

(d) IN FISCAL YEAR 2016, THE COLORADO STATE DEPARTMENT OF CORRECTIONS AND 33 COUNTY JAILS RECEIVED A TOTAL OF \$3,260,720 IN FEDERAL GRANTS FROM THE UNITED STATES DEPARTMENT OF JUSTICE "STATE CRIMINAL ALIEN ASSISTANCE PROGRAM" AS PARTIAL REIMBURSEMENT OF THE COSTS OF INCARCERATING 2,039 CRIMINAL ALIEN INMATES IN THE STATE CORRECTIONAL SYSTEM AND REIMBURSEMENT GRANTS FOR INCARCERATING AN ESTIMATED 6,000 TO 7,500 CRIMINAL ALIENS IN LOCAL JAILS, WITH SUCH GRANTS REPRESENTING LESS THAN 4% OF TRUE COSTS OF INCARCERATION IN THE STATE SYSTEM AND LESS THAN 10% OF TRUE COSTS IN COUNTY JAILS, RESULTING IN COSTS TO COLORADO TAXPAYERS AFTER FEDERAL REIMBURSEMENTS OF OVER \$75,000,000 ANNUALLY AND OVER \$11,000,000 ANNUALLY TO LOCAL TAXPAYERS OR A COMBINED TAXPAYER BURDEN OF OVER \$88,000,000 IN FISCAL YEAR 2016 AND A NET CUMULATIVE COLORADO TAXPAYER COST OF NEARLY \$1,000,000,000 SINCE THE INCEPTION OF THE FEDERAL GRANT REIMBURSEMENT PROGRAM IN 1995.

(e) FEDERAL LAW EXPRESSLY PROHIBITS THE PHYSICAL HARBORING OF PERSONS KNOWN TO BE UNLAWFULLY PRESENT IN THE UNITED STATES, SO IT IS INAPPROPRIATE AND CONTRARY TO THE PUBLIC SAFETY AND WELFARE FOR ANY STATE OR LOCAL GOVERNMENT TO ENCOURAGE, ENDORSE, OR IN ANY WAY SUPPORT ANY PUBLIC OR PRIVATE ORGANIZATION SEEKING TO OFFER SO-CALLED "SANCTUARY PROTECTION" TO PERSONS NOT LAWFULLY PRESENT IN THE UNITED STATES.

(f) UNITED STATES SUPREME COURT ASSOCIATE JUSTICE KENNEDY STATED IN THE MAJORITY OPINION IN *ARIZONA V. UNITED STATES*, 567 U.S. 387 (2012), THAT "THE SUPREMACY CLAUSE PROVIDES A CLEAR RULE THAT FEDERAL LAW 'SHALL BE THE SUPREME LAW OF THE LAND';

. . . UNDER THIS PRINCIPLE, CONGRESS HAS THE POWER TO PREEMPT STATE LAW . . . STATE LAWS ARE PREEMPTED WHEN THEY CONFLICT WITH FEDERAL LAW." [CITATIONS OMITTED]

(g) IN STRIKING DOWN THREE SECTIONS OF ARIZONA LAW CONCERNING ILLEGAL IMMIGRANTS BASED ON FEDERAL SUPREMACY, ASSOCIATE JUSTICE KENNEDY WRITING FOR THE COURT MAJORITY FURTHER FOUND, "THE FEDERAL POWER TO DETERMINE IMMIGRATION POLICY IS WELL SETTLED. IMMIGRATION POLICY CAN AFFECT TRADE, INVESTMENT, TOURISM, AND DIPLOMATIC RELATIONS FOR THE ENTIRE NATION, AS WELL AS THE PERCEPTIONS AND EXPECTATIONS OF ALIENS IN THIS COUNTRY WHO SEEK THE FULL PROTECTION OF ITS LAWS."

(h) ON MARCH 13, 2018, THE FIFTH CIRCUIT U. S. COURT OF APPEALS UPHELD AS CONSTITUTIONAL A TEXAS STATUTE PROHIBITING SANCTUARY POLICIES IN ANY CITY, COUNTY OR OTHER JURISDICTION OF THE STATE, AND NO REVERSAL OF THAT RULING IS LIKELY SINCE IT IS CONSISTENT WITH ALL PRIOR FEDERAL COURT RULINGS.

(3) THE PEOPLE OF COLORADO, THEREFORE, DECLARE THAT IT IS IN THE BEST INTERESTS OF COLORADO TO PROHIBIT ITS STATE AND LOCAL GOVERNMENTS FROM CREATING, ENFORCING OR ADMINISTERING POLICIES, ORDINANCES OR PRACTICES THAT OBSTRUCT, RESTRICT OR DISCOURAGE COMMUNICATION OR COOPERATION WITH ANY FEDERAL LAW ENFORCEMENT AGENCY INCLUDING FEDERAL IMMIGRATION AGENCIES AND PERSONNEL.

**24-33.5-2102. Definitions.** AS USED IN THIS PART 21, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC SAFETY.

(2) "JURISDICTION" MEANS THE STATE OR A POLITICAL SUBDIVISION THEREOF ORGANIZED PURSUANT TO LAW, INCLUDING ANY COUNTY; CITY AND COUNTY; CITY; MUNICIPALITY; SCHOOL DISTRICT, SPECIAL DISTRICT, OR ANY OTHER DISTRICT; AGENCY; INSTRUMENTALITY; LAW ENFORCEMENT AGENCY; AND ANY STATE INSTITUTION OF HIGHER EDUCATION.

**24-33.5-2103. Compliance with federal immigration law - restrictions on jurisdictions regulating official and employee communications relating to immigration status - notice to officials and employees - reports on compliance.** (1) **Compliance with federal immigration law on communications and cooperation.** A JURISDICTION:

(a) SHALL NOT, IN VIOLATION OF 8 U.S.C. SEC. 1373 (a), PROHIBIT, OR IN ANY WAY RESTRICT, ANY JURISDICTION, OFFICIAL, OR EMPLOYEE FROM SENDING TO, OR RECEIVING FROM, FEDERAL IMMIGRATION AGENCIES INFORMATION REGARDING THE CITIZENSHIP OR IMMIGRATION STATUS, LAWFUL OR UNLAWFUL, OF ANY INDIVIDUAL;

(b) SHALL NOT, IN VIOLATION OF 8 U.S.C. SEC. 1373 (b) OR 8 U.S.C. 1644, PROHIBIT, OR IN ANY WAY RESTRICT, THE STATE OR POLITICAL SUBDIVISION OF THIS STATE FROM DOING ANY OF THE FOLLOWING WITH RESPECT TO INFORMATION REGARDING THE IMMIGRATION STATUS, LAWFUL OR UNLAWFUL, OF ANY INDIVIDUAL:

(I) SENDING THE INFORMATION TO, OR REQUESTING THE INFORMATION FROM, FEDERAL IMMIGRATION AGENCIES;

(II) MAINTAINING THE INFORMATION; OR

(III) EXCHANGING THE INFORMATION WITH ANY OTHER FEDERAL, STATE, OR POLITICAL SUBDIVISION OF THIS STATE; AND

(c) SHALL NOT, IN VIOLATION OF 8 U.S.C. SEC. 1324, ENCOURAGE OR FACILITATE THE PHYSICAL HARBORING OF AN ILLEGAL IMMIGRANT.

(2) **Finding of sanctuary jurisdiction.** A JURISDICTION IS DEEMED TO HAVE CREATED A SANCTUARY JURISDICTION POLICY FOR PURPOSES OF THIS SECTION IF IT:

(a) VIOLATES THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION;

(b) IS NOTIFIED BY THE FEDERAL DEPARTMENT OF JUSTICE OR THE FEDERAL DEPARTMENT OF HOMELAND SECURITY THAT IT IS NOT IN COMPLIANCE WITH FEDERAL IMMIGRATION LAW; OR

(c) HAS BEEN DENIED FEDERAL GRANT MONEY OR BEEN FOUND INELIGIBLE TO RECEIVE FEDERAL GRANT MONEY BASED ON LACK OF COMPLIANCE WITH FEDERAL IMMIGRATION LAW.

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(4) **Notice to officials, employees, and law enforcement officers.** THE GOVERNING BODY OF A JURISDICTION SHALL ANNUALLY PROVIDE WRITTEN NOTICE TO EACH ELECTED OFFICIAL, EMPLOYEE, AND LAW ENFORCEMENT OFFICER OF THE JURISDICTION OF HIS OR HER DUTY TO COMPLY WITH ALL FEDERAL LAWS RELATED TO IMMIGRATION, INCLUDING 8 U.S.C. SEC. 1373, 8 U.S.C. SEC. 1324, AND 8 U.S.C. SEC. 1644, AS SPECIFIED IN SUBSECTION (1) OF THIS SECTION.

(5) **Compliance reports.** ON OR BEFORE JANUARY 10, 2020 AND ON OR BEFORE JANUARY 10 OF EACH YEAR THEREAFTER THROUGH JANUARY 10, 2025, THE GOVERNING BODY OF EACH MUNICIPAL OR COUNTY-CITY MUNICIPAL JURISDICTION HAVING A POPULATION OF AT LEAST TEN THOUSAND PEOPLE SHALL SUBMIT A WRITTEN REPORT AND AN AFFIRMATION OF COMPLIANCE TO THE DEPARTMENT THAT INDICATES THAT THE JURISDICTION:

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(6) **Annual report.** ON OR BEFORE APRIL 1, 2020, AND ON OR BEFORE APRIL 1 OF EACH YEAR THEREAFTER THROUGH APRIL 1, 2025, THE DEPARTMENT SHALL COMPILE THE COMPLIANCE REPORTS AND AFFIRMATIONS RECEIVED PURSUANT TO SUBSECTION (5) OF THIS SECTION. THE DEPARTMENT SHALL SUBMIT AN ANNUAL REPORT BASED ON THIS INFORMATION TO THE GENERAL ASSEMBLY, INCLUDING A LIST OF THOSE MUNICIPAL JURISDICTIONS THAT DID NOT SUBMIT A COMPLIANCE REPORT OR AN AFFIRMATION OF COMPLIANCE AS REQUIRED BY SECTION 5. NOTWITHSTANDING THE REQUIREMENT IN SECTION 24-1-136 (11) (a) (I), THE REQUIREMENT TO SUBMIT THE REPORT TO THE GENERAL ASSEMBLY REQUIRED IN THIS SECTION CONTINUES THROUGH 2025.

(7) Effective date. IF ADOPTED BY ELECTORS ON NOVEMBER 6, 2018, THIS STATUTE SHALL TAKE EFFECT ON JULY 1, 2019.

2017-2018 #169 -----

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S. WARD

2:08 P.M.

ORIGINAL SUBMISSION

-----Colorado Secretary of State-----

**Short title.**

The short title of this act is the "Public Safety Protection Against Sanctuary Policies Act".

**SECTION** In Colorado Revised Statutes, add part 21 to article 33.5 of title 24 as follows:

**PART 21**

**PROHIBITION ON SANCTUARY POLICIES IN VIOLATION OF FEDERAL LAW**

**24-33.5-2101. Legislative declaration.** (1) THE PEOPLE OF COLORADO FIND AND DECLARE THAT IT IS NECESSARY TO ENSURE CONSISTENCY AND FAIRNESS IN THE APPLICATION OF THIS PART 21 THROUGHOUT THE STATE AND THAT, THEREFORE, EXCEPT AS OTHERWISE SPECIFIED IN THIS PART 21, ADDRESSING SANCTUARY POLICIES AS OUTLINED IN THIS PART 21 IS A MATTER OF STATEWIDE CONCERN.

(2) THE PEOPLE OF COLORADO FIND AND DECLARE THAT:

(a) ALTHOUGH IMMIGRATION IS MAINLY A QUESTION OF FEDERAL LAW, THE EFFECTS AND COST TO TAXPAYERS OF ILLEGAL IMMIGRATION ARE FELT BY PERSONS THROUGHOUT THE COUNTRY AND IN COLORADO;

(b) TO PROTECT THE SECURITY, SAFETY, AND WELL-BEING OF PERSONS WITHIN THE UNITED STATES, FEDERAL LAWS PROHIBIT STATE AND LOCAL GOVERNMENTS FROM RESTRICTING OR OBSTRUCTING THE EXCHANGE OF INFORMATION WITH FEDERAL AUTHORITIES, OR FROM PUNISHING PERSONS FOR COOPERATING OR EXCHANGING INFORMATION;

(c) STATE AND LOCAL GOVERNMENTS THAT VIOLATE FEDERAL IMMIGRATION LAWS RISK LOSING FEDERAL GRANTS OR ELIGIBILITY FOR FEDERAL GRANTS;

(d) IN FISCAL YEAR 2016, THE COLORADO STATE DEPARTMENT OF CORRECTIONS AND 33 COUNTY JAILS RECEIVED A TOTAL OF \$3,260,720 IN FEDERAL GRANTS FROM THE UNITED STATES DEPARTMENT OF JUSTICE "STATE CRIMINAL ALIEN ASSISTANCE PROGRAM" AS PARTIAL REIMBURSEMENT OF THE COSTS OF INCARCERATING 2,039 CRIMINAL ALIEN INMATES IN THE STATE CORRECTIONAL SYSTEM AND AN ESTIMATED 6,000 TO 7,500 CRIMINAL ALIENS IN LOCAL JAILS, WITH SUCH GRANTS REPRESENTING LESS THAN 4% OF TRUE COSTS OF INCARCERATION IN THE STATE SYSTEM AND LESS THAN 10% OF TRUE COSTS IN COUNTY JAILS, RESULTING IN COSTS TO COLORADO TAXPAYERS AFTER FEDERAL REIMBURSEMENTS OF OVER \$75,000,000 ANNUALLY FOR STATE TAXPAYERS AND OVER

\$11,000,000 ANNUALLY TO LOCAL TAXPAYERS OR A COMBINED TAXPAYER BURDEN OF OVER \$88,000,000 IN FISCAL YEAR 2016 AND A NET CUMULATIVE COLORADO TAXPAYER COST OF NEARLY \$1,000,000,000 SINCE THE INCEPTION OF THE FEDERAL GRANT REIMBURSEMENT PROGRAM IN 1995.

(e) FEDERAL LAW ALSO EXPRESSLY PROHIBITS THE PHYSICAL HARBORING OF PERSONS KNOWN TO BE UNLAWFULLY PRESENT IN THE UNITED STATES, SO IT IS INAPPROPRIATE AND CONTRARY TO THE PUBLIC SAFETY AND WELFARE FOR ANY STATE OR A LOCAL GOVERNMENT TO ENCOURAGE, ENDORSE, OR IN ANY WAY SUPPORT ANY PUBLIC OR PRIVATE ORGANIZATION SEEKING

TO OFFER SO-CALLED "SANCTUARY PROTECTION" TO PERSONS NOT LAWFULLY PRESENT IN THE UNITED STATES;

(f) UNITED STATES SUPREME COURT ASSOCIATE JUSTICE KENNEDY STATED IN THE MAJORITY OPINION IN *ARIZONA V. UNITED STATES*, 567 U.S. 387 (2012), THAT "THE SUPREMACY CLAUSE PROVIDES A CLEAR RULE THAT FEDERAL LAW 'SHALL BE THE SUPREME LAW OF THE LAND'; . . . UNDER THIS PRINCIPLE, CONGRESS HAS THE POWER TO PREEMPT STATE LAW . . . STATE LAWS ARE PREEMPTED WHEN THEY CONFLICT WITH FEDERAL LAW." [CITATIONS OMITTED].

(g) IN STRIKING DOWN THREE ARIZONA LAWS CONCERNING IMMIGRANTS BASED ON FEDERAL SUPREMACY, ASSOCIATE JUSTICE KENNEDY WRITING FOR THE COURT MAJORITY FURTHER FOUND, "THE FEDERAL POWER TO DETERMINE IMMIGRATION POLICY IS WELL SETTLED. IMMIGRATION POLICY CAN AFFECT TRADE, INVESTMENT, TOURISM, AND DIPLOMATIC RELATIONS FOR THE ENTIRE NATION, AS WELL AS THE PERCEPTIONS AND EXPECTATIONS OF ALIENS IN THIS COUNTRY WHO SEEK THE FULL PROTECTION OF ITS LAWS."

((h) ON MARCH 13, 2018, THE FIFTH CIRCUIT US COURT OF APPEALS UPHELD AS CONSTITUTIONAL A TEXAS STATUTE PROHIBITING SANCTUARY POLICIES IN ANY CITY, COUNTY OR OTHER JURISDICTION OF THE STATE, AND NO REVERSAL OF THAT RULING IS LIKELY SINCE IT IS CONSISTENT WITH ALL PRIOR FEDERAL COURT RULINGS.

(3) THE PEOPLE OF COLORADO, THEREFORE, DECLARE THAT IT IS IN THE BEST INTERESTS OF COLORADO TO PROHIBIT ITS STATE AND LOCAL GOVERNMENTS FROM CREATING, ENFORCING OR ADMINISTERING POLICIES, ORDINANCES OR PRACTICES THAT OBSTRUCT, RESTRICT OR DISCOURAGE COMMUNICATION OR COOPERATION WITH ANY FEDERAL LAW ENFORCEMENT AGENCY INCLUDING FEDERAL IMMIGRATION AGENCIES AND PERSONNEL.

**24-33.5-2102. Definitions.** AS USED IN THIS PART 21, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC SAFETY.

(2) "JURISDICTION" MEANS THE STATE OR A POLITICAL SUBDIVISION THEREOF ORGANIZED PURSUANT TO LAW, INCLUDING ANY COUNTY; CITY AND COUNTY; CITY; MUNICIPALITY; SCHOOL DISTRICT, SPECIAL DISTRICT, OR ANY OTHER DISTRICT; AGENCY; INSTRUMENTALITY; LAW ENFORCEMENT AGENCY; AND ANY STATE INSTITUTION OF HIGHER EDUCATION.

**24-33.5-2103. Compliance with federal immigration law - restrictions on jurisdictions regulating official and employee communications relating to immigration status - notice to officials and employees - reports on compliance.** (1) **Compliance with federal immigration law on communications and cooperation.** A JURISDICTION:

(a) SHALL NOT, IN VIOLATION OF 8 U.S.C. SEC. 1373 (a), PROHIBIT, OR IN ANY WAY RESTRICT, ANY JURISDICTION, OFFICIAL, OR EMPLOYEE FROM SENDING TO, OR RECEIVING FROM, FEDERAL IMMIGRATION AGENCIES INFORMATION REGARDING THE CITIZENSHIP OR IMMIGRATION STATUS, LAWFUL OR UNLAWFUL, OF ANY INDIVIDUAL;

(b) SHALL NOT, IN VIOLATION OF 8 U.S.C. SEC. 1373 (b) OR 8 U.S.C. SEC. 1644, PROHIBIT, OR IN ANY WAY RESTRICT, THE STATE OR POLITICAL SUBDIVISION OF THIS STATE FROM DOING ANY OF THE FOLLOWING WITH RESPECT TO INFORMATION REGARDING THE IMMIGRATION STATUS, LAWFUL OR UNLAWFUL, OF ANY INDIVIDUAL:

(I) SENDING THE INFORMATION TO, OR REQUESTING THE INFORMATION FROM, FEDERAL IMMIGRATION AGENCIES;

(II) MAINTAINING THE INFORMATION; OR

(III) EXCHANGING THE INFORMATION WITH ANY OTHER FEDERAL, STATE, OR POLITICAL SUBDIVISION OF THIS STATE; AND

(c) SHALL NOT, IN VIOLATION OF 8 U.S.C. SEC. 1324, ENCOURAGE OR FACILITATE THE PHYSICAL HARBORING OF AN ILLEGAL IMMIGRANT.

(2) **Finding of sanctuary jurisdiction.** A JURISDICTION IS DEEMED TO HAVE CREATED A SANCTUARY JURISDICTION POLICY FOR PURPOSES OF THIS SECTION IF IT:

(a) VIOLATES THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION;

(b) IS NOTIFIED BY THE FEDERAL DEPARTMENT OF JUSTICE OR THE FEDERAL DEPARTMENT OF HOMELAND SECURITY THAT IT IS NOT IN COMPLIANCE WITH FEDERAL IMMIGRATION LAW; OR

(c) HAS BEEN DENIED FEDERAL GRANT MONEY OR BEEN FOUND INELIGIBLE TO RECEIVE FEDERAL GRANT MONEY BASED ON LACK OF COMPLIANCE WITH FEDERAL IMMIGRATION LAW.

(3) **Federal court orders.** NOTHING IN THIS SECTION REQUIRES A JURISDICTION, AN OFFICIAL, OR AN EMPLOYEE TO VIOLATE AN APPLICABLE COURT RULING REGARDING THE ENFORCEMENT OF ANY PROVISION OF FEDERAL IMMIGRATION LAW ORIGINATING FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO, THE UNITED STATES TENTH CIRCUIT COURT OF APPEALS, OR THE UNITED STATES SUPREME COURT.

(4) **Notice to officials, employees, and law enforcement officers.** THE GOVERNING BODY OF A JURISDICTION SHALL ANNUALLY PROVIDE WRITTEN NOTICE TO EACH ELECTED OFFICIAL, EMPLOYEE, AND LAW ENFORCEMENT OFFICER OF THE JURISDICTION OF HIS OR HER DUTY TO COMPLY WITH ALL FEDERAL LAWS RELATED TO IMMIGRATION, INCLUDING 8 U.S.C. SEC. 1373, 8 U.S.C. SEC. 1324, AND 8 U.S.C. SEC. 1644, AS SPECIFIED IN SUBSECTION (1) OF THIS SECTION.

(5) **Compliance reports.** ON OR BEFORE JANUARY 10, 2019, AND ON OR BEFORE JANUARY 10 OF EACH YEAR THEREAFTER THROUGH JANUARY 10, 2025, THE GOVERNING BODY OF EACH JURISDICTION HAVING A POPULATION OF AT LEAST TEN THOUSAND PEOPLE SHALL SUBMIT A WRITTEN REPORT AND AN AFFIRMATION OF COMPLIANCE TO THE DEPARTMENT THAT INDICATES THAT THE JURISDICTION:

(a) IS IN COMPLIANCE WITH THE REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION;

(b) HAS NOT BEEN NOTIFIED BY THE FEDERAL GOVERNMENT THAT IT IS NOT IN COMPLIANCE WITH FEDERAL IMMIGRATION LAW; AND

(c) HAS NOT BEEN DENIED FEDERAL GRANT MONEY OR BEEN FOUND INELIGIBLE TO RECEIVE FEDERAL GRANT MONEY AS DESCRIBED IN SUBSECTION (2) OF THIS SECTION.

(6) **Annual report.** ON OR BEFORE APRIL 1, 2019, AND ON OR BEFORE APRIL 1 OF EACH YEAR THEREAFTER THROUGH APRIL 1, 2025, THE DEPARTMENT SHALL COMPILE THE COMPLIANCE REPORTS AND AFFIRMATIONS RECEIVED PURSUANT TO SUBSECTION (5) OF THIS SECTION. THE DEPARTMENT SHALL SUBMIT AN ANNUAL REPORT BASED ON THIS INFORMATION TO THE GENERAL ASSEMBLY, INCLUDING A LIST OF THOSE JURISDICTIONS THAT DID NOT SUBMIT A COMPLIANCE REPORT OR AN AFFIRMATION OF COMPLIANCE. NOTWITHSTANDING THE REQUIREMENT IN SECTION 24-1-136 (11) (a) (I), THE REQUIREMENT TO SUBMIT THE REPORT TO THE GENERAL ASSEMBLY REQUIRED IN THIS SECTION CONTINUES THROUGH 2025.

## **Ballot Title Setting Board**

### **Proposed Initiative 2017-2018 #169<sup>1</sup>**

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

A change to the Colorado Revised Statutes concerning state and local government cooperation in the enforcement of federal immigration laws, and, in connection therewith, prohibiting state and local government from barring or restricting communication with federal immigration agencies regarding the citizenship or immigration status of any individual or the intergovernmental sharing or maintenance of records of such citizenship or immigration status; prohibiting state and local government from encouraging or facilitating the physical harboring of an individual not lawfully present in the United States; requiring each jurisdiction to annually notify its elected officials and employees of their duty to comply with federal immigration laws; and requiring annual compliance reporting.

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

Shall there be a change to the Colorado Revised Statutes concerning state and local government cooperation in the enforcement of federal immigration laws, and, in connection therewith, prohibiting state and local government from barring or restricting communication with federal immigration agencies regarding the citizenship or immigration status of any individual or the intergovernmental sharing or maintenance of records of such citizenship or immigration status; prohibiting state and local government from encouraging or facilitating the physical harboring of an individual not lawfully present in the United States; requiring each jurisdiction to annually notify its elected officials and employees of their duty to comply with federal immigration laws; and requiring annual compliance reporting?

*Hearing April 18, 2019:*

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

*Hearing adjourned 10:57 a.m.*

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<sup>1</sup> Unofficially captioned “Compliance with Federal Immigration Law” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

RECEIVED

APR 25 2018

S. WARD  
2:37 P.M.

**BEFORE THE TITLE SETTING BOARD**

Colorado Secretary of State

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**In Re Title and Ballot Title and Submission Clause for Initiative 2017-2018 #169**

**Kyle Huelsman, Objector;**

**Floyd Trujillo and Thomas Tancredo, Designated Representatives.**

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**MOTION FOR REHEARING**

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Kyle Huelsman, through undersigned counsel, is a registered elector of the State of Colorado and hereby objects to the title and ballot title and submission clause set for Initiative 2017-2018 #169 (“Compliance with Federal Immigration Law”).

On April 18, 2017, the Title Board set the ballot title and submission clause for this measure reads as follows:

*-Shall there be a change to the Colorado Revised Statutes concerning state and local government cooperation in the enforcement of federal immigration laws, and, in connection therewith, prohibiting state and local government from barring or restricting communication with federal immigration agencies regarding the citizenship or immigration status of any individual or the intergovernmental sharing or maintenance of records of such citizenship or immigration status; prohibiting state and local government from encouraging or facilitating the physical harboring of an individual not lawfully present in the United States; requiring each jurisdiction to annually notify its elected officials and employees of their duty to comply with federal immigration laws; and requiring annual compliance reporting?*

**I. THE TITLE BOARD LACKS JURISDICTION TO SET TITLES FOR INITIATIVE #169.**

A. Contrary to Colo. Const., art. V, §1(5.5), Initiative #169 violates the single subject requirement, as state and local cooperation in the “enforcement” of “federal immigration laws” is too broad of a topic to constitute a single subject. The measure’s specific mandates are separate subjects, including:

(1) an information exchange with the federal government that applies to all persons even if such reports address the person’s lawful immigration status or citizenship; and

(2) a prohibition on encouraging or facilitating any harboring of a person whose immigration status is not lawful.

These two policy proposals lack a necessary connection and are not dependent upon each other, thus violating the single subject requirement. *In re Title & Ballot Title & Submission Clause for 2005-2006 #55*, 138 P.3d 273, 282 (Colo. 2006) (given the “diversity of approaches and attitudes regarding the presence of individuals targeted under this Initiative” (lawful immigrants), voters could support one element of the initiative but not the other, and the measure did not comprise a single subject).

- B. Contrary to Colo. Const., art. V, §1(5.5), Initiative #169 violates the single subject requirement, as it misstates the federal statutes cited (8 U.S.C. §1644 and 8 U.S.C. §1373(b)) which, by their terms, apply only to transmitting information to or from “the Immigration and Naturalization Service” and do not extend this obligation on the part of Colorado governments to all “federal immigration agencies” which are neither defined by the measure nor immediately discernible by voters, and thus reflect a hidden subject of the measure. *Id.* (“In failing to describe non-emergency services by defining, categorizing, or identifying subjects or purposes, the Initiative fails to inform voters of the services its passage would affect... [and] results in items being concealed within a complex proposal as prohibited by the single subject rule.”)
- C. Contrary to C.R.S. §1-40-105(2), the addition of “federal” to modify “authorities” in the legislative declaration was not a topic addressed in the legislative staff’s Review & Comment memo. As an expression of the voters’ legislative intent to guide implementation of this initiative, which is the guiding principle for court interpretation after an election, *see, e.g., In re Interrogatories Relating to the Great Outdoors Colo. Trust Fund*, 913 P.2d 533, 542 (Colo. 1996) (“courts should give effect to the intent of the people who adopted the provision.... in construing constitutional language, each clause and sentence must be presumed to have purpose and use”), this change is a substantial change that required the proponents to resubmit their measure for legislative staff’s assessment.

## **II. THE BOARD’S TITLES DO NOT PROVIDE A CLEAR AND FAIR SUMMARY OF INITIATIVE #169.**

- A. The titles fail to state that the measure, by its express terms, requires the accumulation of information about and reporting of “lawful” (as well as “unlawful”) citizenship or immigration status. Its sole reference to any status is to “harboring” of one who is “not lawfully present in the United States.” *In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the Town of Idaho Springs*, 830 P.2d 963, 969-70 (Colo. 1992) (Title Board errs where it understates the scope of an initiative).
- B. The titles fail to state that the measure, by its express terms, extends beyond the typical notion of “local government” and applies, by its terms, to school districts, special districts, and “any other district.” Without this clarity, voters cannot

know, that Initiative #169 requires, for example: (a) a school district's personnel to track and report the citizenship and immigration status of "any individual" (e.g., students, parents, teachers, administrators, and staff); or (b) a library district's personnel to track and report citizenship and immigration status of "any individual" (e.g., persons holding library cards, employees, vendors, contractors, and contributors). *Id.*

- C. The titles are misleading, given its under-inclusive reference to "local government" when the measure applies, in defining "jurisdiction," to the intentionally broad category of "any other district" which would include everything from RTD to SCFD to flood control districts to water conservancy districts and hundreds or thousands of other districts in Colorado. *Id.*
- D. The titles fail to state that the measure, by its express terms, extends beyond the typical notion of government and extends to "any... instrumentality" which term is neither defined nor limited by the initiative and which has an expansive meaning under Colorado law, thus requiring such entities to report on the lawful and unlawful immigration status and citizenship of patients, visitors, medical and non-medical employees, and contractors. *Id.*
- E. The titles fail to state that the measure, by its express terms, extends beyond the typical notion of "state government" to include "any state institution of higher learning" which qualifies as an "enterprise" rather than a unit of government. *See* C.R.S. §23-5-101.7 (authorizing state universities and community colleges to operate as "enterprises" under Colo. Const., art. X, sec. 20 (TABOR)).
- F. The titles fail to state that the measure, by its express terms, delegates to the federal government decision making about a jurisdiction's compliance with state law, including by using tests such as an agency's denial of federal grant money.

### **III. THE ABSTRACT PREPARED FOR INITIATIVE #169 FAILS TO MEET THE PERTINENT STATUTORY REQUIREMENTS.**

- A. The abstract fails to estimate the acknowledged "increases [in] costs and workload for state agencies to make the required notifications and to prepare annual reports."
- B. The abstract fails to estimate the acknowledged "increases [in] workload for local governments, school districts, and statutory public entities to make the required notifications, as well as for certain municipal and county-city municipal jurisdictions to submit compliance reports to the state." The statute does not permit the abstract to simply conclude that, given the inevitability of such fiscal effects, those "impacts have not been estimated."

Respectfully submitted this 25<sup>th</sup> day of April, 2018.



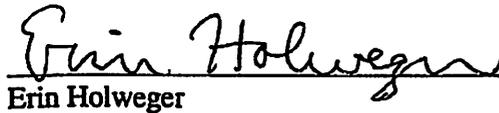
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**ATTORNEY FOR PETITIONER**

**CERTIFICATE OF SERVICE**

I hereby affirm that a true and accurate copy of the Motion for Rehearing was sent this day, April 25, 2018, via U.S. Mail, first class postage prepaid, to:

Floyd Trujillo  
11232 W. Mesa Run  
Littleton, CO 80125

Thomas Tancredo  
15342 W. Iliff Dr.  
Lakewood, CO 80228



Erin Holweger

## **Ballot Title Setting Board**

### **Proposed Initiative 2017-2018 #169<sup>1</sup>**

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

A change to the Colorado Revised Statutes concerning state and local government cooperation in the enforcement of federal immigration laws, and, in connection therewith, prohibiting state and local government from barring or restricting communication with federal immigration agencies regarding the citizenship or immigration status, whether lawful or unlawful, of any individual or the intergovernmental sharing or maintenance of records of such citizenship or immigration status; prohibiting state and local government from encouraging or facilitating the physical harboring of an individual not lawfully present in the United States; requiring each jurisdiction to annually notify its elected officials and employees of their duty to comply with federal immigration laws; and requiring annual compliance reporting.

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

Shall there be a change to the Colorado Revised Statutes concerning state and local government cooperation in the enforcement of federal immigration laws, and, in connection therewith, prohibiting state and local government from barring or restricting communication with federal immigration agencies regarding the citizenship or immigration status, whether lawful or unlawful, of any individual or the intergovernmental sharing or maintenance of records of such citizenship or immigration status; prohibiting state and local government from encouraging or facilitating the physical harboring of an individual not lawfully present in the United States; requiring each jurisdiction to annually notify its elected officials and employees of their duty to comply with federal immigration laws; and requiring annual compliance reporting?

*Hearing April 18, 2019:*

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

*Hearing adjourned 10:57 a.m.*

*Rehearing April 26, 2018:*

*Motion for Rehearing granted only to the extent that the Board made changes to the titles and the fiscal impact abstract; denied in all other respects.*

*Hearing adjourned 1:46 p.m.*

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<sup>1</sup> Unofficially captioned “Compliance with Federal Immigration Law” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

## **Abstract of Initiative 169: COMPLIANCE WITH FEDERAL IMMIGRATION LAW**

**This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of April, 2018, identifies the following impacts:**

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

***State expenditures.*** The measure increases costs and workload for state agencies to make the required notifications and to prepare annual reports. The cost and workload increases can be absorbed within existing appropriations to the affected state agencies without requiring additional state spending.

***Local governments.*** Similar to the state, the measure increases workload for local governments, school districts, and statutory public entities to make the required notifications, as well as for certain municipal and county-city municipal jurisdictions to submit compliance reports to the state.

To the extent that local government entities are not currently complying with federal immigration policy, the measure may also increase workload and costs to do so. These cost and workload increases cannot be determined.