

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Colorado Secretary of State

Philip Hayes, Objector

S.WARD 9:21 A.M.

vs.

Mike Spaulding and David Ottke, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2015-2016 #36

Philip Hayes, through his legal counsel, Recht Kornfeld P.C., objects to the Title Board's title and ballot title and submission clause set for Initiative 2015-2016 #36 ("Public Accountability of Officers").

On September 16, 2015, the Board set the following ballot title and submission clause:

Shall there be an amendment to the Colorado constitution concerning accountability of public officers, and, in connection therewith, specifying recall and successor election procedures for state and local elected officers; requiring retention elections every four years for all state and local judicial officers; defining future eligibility for elected office for officers who do or do not defeat recall; making judicial officers defeated for retention ineligible for judicial office for ten years; and prohibiting identification, reporting, or limiting of donations to recall campaigns and payments to recall petition circulators?

ADVISORY GROUNDS FOR RECONSIDERATION

- I. #36 comprises multiple subjects in violation of the Colorado Constitution.**
- A. "Accountability of public officers" is not a "subject" under Colo. Const. art. V. sec. 1(5.5), but instead, is a broad label that attempts to link unrelated topics and independent substantive measures to one another.
- B. The Board lacks jurisdiction to set a title for #36 under Colo. Const., art. V, sec. 1(5.5) as the measure contains multiple subjects.
1. The subject of the measure is a new set of procedures for initiating and holding recall elections. *Matter of Title, Ballot Title, & Submission Clause for 2013-2014 #76*, 333 P.3d 76, 81 (Colo. 2014).

2. The measure adds the substantive requirement to hold quadrennial retention elections for all judicial officers, which is a distinct subject from changing recall procedures for state and local elected officials. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-00 Nos. 245(f) and 245(g)*, 1 P.3d 739, 743 (Colo. 2000) (recognizing “the selection, retention, and removal of judicial officers” is its own single subject).
3. The measure changes the well-known power, set out in Colo. Const., art. XX, sec. 6, of home rule municipalities to control all election matters. *See Matter of Title, Ballot Title and Submission Clause, and Summary for 1997-1998 No. 95*, 960 P.2d 1204, 1208-09 (Colo. 1998).
4. The measure changes qualifications for holding all judicial offices in Colorado. *Matter of Title, Ballot Title and Submission Clause, and Summary for 1997-1998 No. 64*, 960 P.2d 1192, 1197 (Colo. 1998) (defining judicial qualifications as “the requirements and procedures for the commencement and terminations of appointments to judgeships;” other provisions constitute a separate subject).
5. The measure changes qualifications for holding all state and local elective offices in Colorado. *Id.*
6. The measure limits certain post-recall terms (i.e., where no successor is elected) by extending a vacancy until November of the following year rather than allowing for full representative government even after officials are recalled. *See In re Proposed Election Reform Amendment*, 852 P.2d 28, 36 (Colo. 1993).
7. The measure allows for recall of multiple (up to five) officials on the same recall petition, thus eliminating the “single subject” element of existing recall petitions – that is, the recall of a single, named elected official. Colo. Const., art. XXI, sec. 1 (“procedure hereunder to recall an elective public officer...”; “a successor of the incumbent sought to be recalled”; “the officer named in said petition”; “the person sought to be recalled”; “a successor to the incumbent”).
8. The measure allows for recall of multiple (up to five) officials on the same recall petition within the same recall area and thus allows for the simultaneous recall of officials holding different and unrelated offices. *Id.*

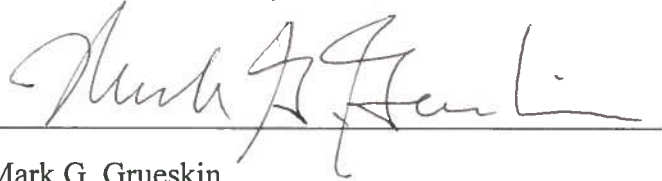
II. Even if the Board has jurisdiction to set a title for #36, the title it set was misleading, confusing, and not reflective of the intent of the proponents.

- A. The title fails to state that no local recall laws may be adopted.
- B. The title fails to state the measure significantly reduces or changes the number of signatures required for a sufficient recall petition.

- C. The title fails to state the measure significantly changes and reduces the number of signatures required for a sufficient candidate petition.
- D. The title fails to state that as many as five elective officials within the “same recall area” can be recalled by means of one petition.
- E. The title fails to state that single petitions may be used to trigger a recall of as many as five unrelated elected officials.
- F. The title fails to state that, where there is no successor candidate elected, the office in question will remain vacant until “the next November election” at least 90 days later.
- G. The title fails to state that candidate elections will be held on the first Tuesday in November of odd-numbered years.
- H. The title fails to state the measure drastically lengthens the period allowed to gather sufficient signatures for a recall petition.
- I. The title fails to state the measure eliminates the time periods for elected officers to be immune from recall except that successors to offices vacated by recalled officials cannot be recalled for two years.
- J. The title fails to state the measure restricts the ability of election officials to ensure the legality of petition signatures and circulator actions.
- K. The title fails to specify the changes made to qualifications of elected officials (for four years, they cannot have been recalled from that elected office or resigned from office during the recall process).
- L. The title fails to specify the changes made to qualifications of judicial officials (for ten years, they cannot have been non-retained for judicial office).
- M. The title fails to state that an election official may only strike a signer’s completed entry by disproving its validity in court and by clear and convincing evidence.

RESPECTFULLY SUBMITTED this 23rd day of September, 2015.

RECHT KORNFELD, P.C.



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CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate cop of the **MOTION FOR REHEARING ON INITIATIVE 2015-2016 #36** was sent this day, September 23, 2015, via first class U.S. mail, postage pre-paid to the proponents at:

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