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S. WARD

Colorado Secretary of State

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Scott E. Smith, Objector,

vs.

Daniel Hayes and Julianne Page, Proponents.

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

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

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

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units to one percent annually starting in 2019, and 3) permitting the one percent growth limitation to be amended or repealed by initiative and referendum commencing in 2021?

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

A. Initiative #66 Violates the Single Subject Requirement.

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

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

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

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

Initiative 2017-2018 #66's subjects include

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

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

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

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

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

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

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

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

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

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

Respectfully submitted this 13th day of December, 2017.

s/Heather R. Hanneman
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Monument, CO 80132

CERTIFICATE OF SERVICE

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

Daniel Hayes
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s/Erin Holweger_____

STATE OF COLORADO

Colorado General Assembly

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October 18, 2017

Daniel Hayes
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Golden, CO 80403

Julianne Page
3565 Kline Street
Wheatridge, CO 80033

Re: Proposed Initiative Measure 2017-2018 #66, Concerning Limit on Local Housing Growth

Dear Mr. Hayes and Ms. Page:

Pursuant to section 1-40-105 (2), C.R.S., we hereby notify you that the above proposed measure does not raise any additional comments from our offices that have not been raised in earlier memoranda or hearings on your proposed measure on this topic. Section 1-40-105 (2), C.R.S., provides in part:

1-40-105. Filing procedure - review and comment - amendments - filing with secretary of state. (2) . . . If the directors have no additional comments concerning the amended petition, they may so notify the proponents in writing, and, in such case, a hearing on the amended petition pursuant to subsection (1) of this section is not required.

Rule 12 of the *Rules for Staff of Legislative Council and Office of Legislative Legal Services: Review and Comment Filings*, adopted by the Legislative Council on September 6, 2000, requires that such determination and notification be made no later than 72 hours after the filing. Your measure was received by our office on October 16, 2017.

This letter serves as the written notice required by section 1-40-105 (2), C.R.S. It is our understanding that pursuant to that section, no review and comment hearing pursuant to section 1-40-105 (1), C.R.S., is required.

Very truly yours,

Sharon Eubanks, Director
Office of Legislative Legal Services

Mike Mauer, Director
Legislative Council