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MAR 26 2014

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Colorado Secretary of State

S-WARD 4:00 P.M.

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Philip Hayes, Objector

vs.

Mike Spaulding and Natalie Menten, Proponents.

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**MOTION FOR REHEARING ON INITIATIVE 2013-2014 #76**

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Phillip Hayes, through legal counsel, Recht Kornfeld P.C., objects to the Title Board's title and ballot title and submission clause set for Initiative 2013-14 #76 ("Recall of State and Local Officials").

On March 19, 2014, the Board set the following ballot title and submission clause:

Shall there be an amendment to the Colorado constitution concerning the recall of government officers, and, in connection therewith, defining which officers are eligible for recall; describing procedures and requirements to initiate, conduct, protest, and enforce recall elections; prohibiting any officer who is recalled, resigns, or is removed during the recall process from serving in certain offices for four years; and prohibiting the application of certain campaign finance requirements to recalls.

**ADVISORY GROUNDS FOR RECONSIDERATION**

**A. The Board lacks jurisdiction to set a title for #76 under C.R.S. 1-40-105(4)**

The measure's designated representatives failed to provide to the Title Board and the public a properly "amended" version of their initiative that shows what specific language was deleted. *In the Matter of the Title, Ballot Title and Submission Clause, and Summary for Initiative 1997-97 #109*, 962 P.2d 252 (Colo. 1998).

**B. The Board lacks jurisdiction to set a title for #76 under Colo. Const., art. V, sec. 1(5.5). as the measure contains multiple subjects.**

1. The measure adds the substantive right to "recall" non-elective officers, which is a subject distinct from changing existing recall procedures. *In re Title, Ballot Title & Submission Clause for Proposed Initiative 2001-02 #43*, 46 P.3d 438 (Colo. 2002) (changing both substantive rights and procedures around initiative process violated single subject rule); see *Fraternal Order of Police, Colorado Lodge Lodge #19 v. City of Commerce City*, 996 P.2d 133, 135-37 (Colo. 2000) (Art. XXI, sec. 4 prevents against unlawful delegation of power and provides for political accountability in government decision-making, rather than a right of recall as applied to appointed officials).
2. The measure adds the substantive right to "recall" judicial officers, which is a subject distinct from changing existing recall procedures. *In re Proposed Initiative Adding Section 2 to Article VII*, 900 P.2d 104, 109 (Colo. 1995) (substantive and procedural elements of measure dealing with, among other things, right of recall violated single subject requirement).
3. The measure surreptitiously leaves vacant certain offices (where no successor is elected) by prohibiting the naming of successors until the following November elections. See *In re Proposed Election Reform Amendment*, 852 P.2d 28, 36 (Colo. 1993).
4. The measure surreptitiously allows for recall of multiple (up to five) officials on the same recall petition within "the same government" and thus allowing for different officials from different branches of government to be recalled by means of one petition.
5. The measure surreptitiously 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 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”); #43, *supra* (change to single subject rule for initiatives a separate subject from other substantive right changes and procedural changes).
6. The measure contains separate subjects: repeal of Article XXI, which contains disparate subjects (including the substantive right of recall, procedures associated with recall petitions, procedures associated with recall and successor elections, plenary authority of local governments over recall within their jurisdictions, repayment of costs of unsuccessful recall elections, and legislative authority to enact recall related legislation); and the reenactment of a replacement provision that also contains multiple subjects. *In re*

*Proposed Initiative 1996-4*, 916 P.2d 528 (Colo. 1996) (substantive repeal and reenactment of multi-subject constitutional measure violates single subject requirement).

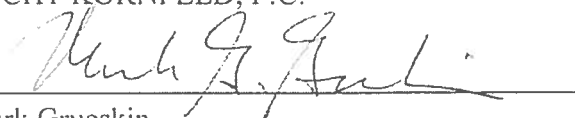
7. The repeal of sections of Article XXVIII of the Colorado Constitution (reporting of donors to recall campaigns which qualify as ballot issues) and the substantive change to the reporting of petition circulators, which acts as an anti-fraud protection, are separate subjects. *Doe v. Reed*, 130 S. Ct. 2811 (2010).

**C. Even if the Board has jurisdiction to set a title for #76, the title it set was misleading, confusing, and not reflective of the intent of the proponents.**

1. The title fails to state that "recall" would extend to appointed officers who do not stand for any election under existing law.
2. The title fails to state that "recall" would extend to a wide array of judicial officers, none of whom are elected even though some – but not all – may be subject to the retention process.
3. The title fails to disclose that the measure eliminates campaign finance reporting by persons or entities supporting any recall effort, whether it is for an elective, non-elective, or judicial officer.
4. The title fails to disclose that the measure eliminates public access to lists or names of persons who circulated recall petitions.
5. The title fails to state that the measure significantly reduces the number of signatures required for a sufficient recall petition.
6. The title fails to state that the measure significantly reduces the number of signatures required for a sufficient candidate petition.
7. 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.
8. The title fails to state that single petitions may be used to trigger a recall of as many as five government officials.
9. The title fails to state that as many as five elective as well as appointed officials within "the same government" can be recalled by means of one petition.

RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of March, 2014.

RECHT KORNFIELD, P.C.



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#### CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2013-2014 #76** was sent this day, March 26, 2014, via first class U.S. mail, postage pre-paid to the proponents at:

Mike Spalding  
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