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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

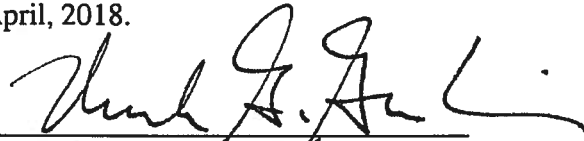
know, that Initiative #169 requires, for example: (a) a school district's personnel to track and report the citizenship and immigration status of "any individual" (e.g., students, parents, teachers, administrators, and staff); or (b) a library district's personnel to track and report citizenship and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



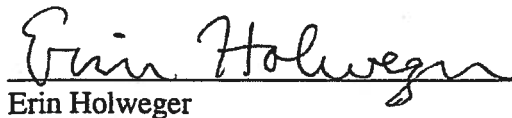
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**CERTIFICATE OF SERVICE**

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, tot:

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