

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Colorado Secretary of State

Scott E. Smith, Objector

vs.

Dan Hayes and Julianne Page, Proponents.

**MOTION FOR REHEARING ON INITIATIVE 2017-2018 #4
("Limit on Local Housing Growth")**

Scott E. Smith, a registered elector of the State of Colorado, through legal counsel, Recht Kornfeld P.C., objects to the Title Board's title and ballot title and submission clause set for Initiative 2017-18 #4 ("Limit on Local Housing Growth"). The Board set the following ballot title and submission clause for Initiative 2017-18 #4 on December 21, 2016:

Shall there be an amendment to the Colorado constitution 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; limiting the growth of privately owned residential housing units in the city and counties of Broomfield and Denver, and in the counties of Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer, and Weld, to one percent annually for the years 2019 and 2020; permitting such growth limitations to be amended or repealed commencing in 2021 by initiative and referendum; and prohibiting the issuance of new permits for privately owned housing units by local governments located in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?

A. Initiative #4 contains multiple subjects, contrary to Colo. Const., art. V, sec. 1(5.5).

Initiative #4 ("#4") violates the single subject requirement for initiatives. *In re Title for Initiative 2001-2002 #43*, 46 P.3d 438, 448 (Colo. 2002) (changing both petitioning procedures and substantive rights addressing matters of local concern violates single subject requirement).

1. #4 redirects the people's grant of legislative authority by creating the first and only constitutional right of initiative at the county-wide level.
2. #4 restricts traditional municipal powers (including the right of municipal initiatives, granted by Colo. Const., art. V, § 1(9)) by transferring certain binding power over growth to county voters.

3. By setting statewide limits, #4 removes from local government the power to determine the amount and timing of residential housing growth.
4. #4 combines a statewide process for local growth limit initiatives and referenda with local limits on residential housing growth for certain named counties.
5. #4 establishes new procedures and standards for a certain class of initiatives (those dealing with housing growth).
6. #4 changes home rule control over the conduct of certain municipal elections.
7. #4 sets a two-year (2019-2021) mandatory growth limit for 10 named counties.
8. #4 bans the right of initiative dealing with growth in the 10 named counties.
9. #4 limits the applicability of state statutes on the question of local growth.

B. Initiative #4 contains elements that are not accurately described in the ballot title.

1. The title fails to state the county, by initiative, “may... uniformly” restrict growth within the county without requiring any such restriction to be uniform.
2. The title fails to state that, for two years (2019-2021), there is no right of initiative or referendum on growth limits in the 10 named counties.
3. The title fails to state the starting date of the moratorium on new permit issuance, as it runs from “declaration of voter approval” until Jan. 1, 2019.
4. The title fails to state which petitioning procedures (signature requirements, petition form challenges, signature sufficiency) are affected by this initiative.

C. Initiative #4’s fiscal impact statement and abstract are misleading or prejudicial and are contrary to C.R.S. §§ 1-40-105.5, -107(1)(a)(II)(B).

1. The fiscal impact statement fails to state “whether there is a fiscal impact for the initiated measure.” C.R.S. § 1-40-105.5(2)(c)(II).
2. The abstract’s statement of “Local government revenue and spending” does not provide any current estimate or projected estimates of such revenue and spending.
3. The abstract’s statement, “Limits on housing permits will also impact the distribution of construction employment, retail trade, and population within Colorado”, does not materially inform voters of any actual economic impact of the measure.
4. The statement that “local governments may receive additional property tax revenue” is conjecture and fails to call to voters’ attention the spending and revenue limits of TABOR, Colo. Const., art. X, § 20.

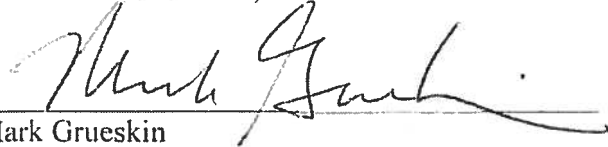
D. Initiative #4 does not comply with C.R.S. §§ 1-40-105.5(3), -107(1)(a)(II)(C).

1. The abstract does not contain an estimate of the amount of any state and local government recurring expenditures. C.R.S. § 1-40-105.5(3)(a).
2. The abstract does not include a “statement of the measure’s economic benefits for all Coloradans” as required by C.R.S. § 1-40-105.5(3)(b).
3. The abstract does not contain an “estimate of the amount of any state and local fiscal liabilities if the measure is enacted.” C.R.S. § 1-40-105.5(3)(c).

WHEREFORE, the decision to set such titles should be reversed, due to the single subject violations addressed herein, and further, such titles as well as the fiscal impact statement and abstract should be revised to account for misstatements of Initiative #4 as specified herein.

RESPECTFULLY SUBMITTED this 28th day of December, 2016.

RECHT KORNFELD, P.C.



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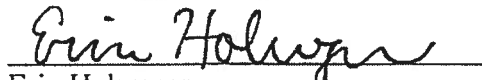
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CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the MOTION FOR REHEARING ON INITIATIVE 2017-2018 #4 was sent this day, December 28, 2016 via email and first class mail, United States Postal Service, to proponents at:

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