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SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	FILED IN THE SUPREME COURT JUN 12 2008 OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK
ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2007) Appeal from Ballot Title Board	▲ **COURT USE ONLY** ▲
IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE AND SUMMARY FOR 2007-2008 #123; REED NORWOOD AND CHARLES BADER, Petitioners v. JULIAN JAY COLE, OBJECTOR, AND WILLIAM A. HOBBS, DAN CARTIN AND DAN DOMENICO, TITLE BOARD, Respondents.	Case No.: 08 SA 199
JOHN W. SUTHERS, Attorney General MAURICE KNAIZER, Deputy Attorney General* 1525 Sherman Street, 7th Floor Denver, CO 80203 (303)866-5380 Registration Number: 05264 *Counsel of Record	

OPENING BRIEF OF TITLE BOARD

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STATUTES

William A. Hobbs, Dan Cartin and Dan Domenico, in their capacities as members of the Title Board, (hereinafter "Board"), hereby submit their Opening Brief.

STATEMENT OF THE ISSUE

Did the Board properly refuse to set a title for Proposed Initiative #123 because it contained multiple subjects?

STATEMENT OF THE CASE

The Board adopts the statement of the case set forth in Objectors' Petition for Review.

STATEMENT OF THE FACTS

#123 places limits on conditions of employment by employers. Paragraph 1 of the measure states, "An employer shall not require, as a condition of employment, that an employee join or pay dues, assessments, or other charges to or for a labor organization". The first sentence of the second paragraph defines "labor organization." It states, "As used solely in this article, and notwithstanding any other provision of law, 'labor organization' means any organization of employees that exists solely or primarily for the purpose other than dealing with employers concerning grievances, labor disputes, wages, rages of pay, employee

benefits, hour of employment or conditions of work." The second sentence of the second paragraph states that the definition of 'labor organization' in #123 "shall prevail over any conflicting definition of 'labor organization' in article XVIII, including any provision adopted at the 2008 general election, regardless of the number of votes received by this or any other such amendment."[1]

SUMMARY OF THE ARGUMENT

#123 contains at least three subjects: (1) preventing employers from placing a conditions of employment that an employee join or pay dues, assessments or other charges for labor organizations other than unions; (2) amending § 1-40-123, C.R.S. (2007) to remove the requirement that "in case of conflicting provisions, the one that receives the greatest number of affirmative votes shall prevail in all particulars as to which there is a conflict;" and (3) overriding other measures presented to the public at the November 2008 general election.

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[1]Measures #123 and #124, which were presented to the Board at the same time, differ in only one respect. #123 includes the phrase "regardless of the number of votes received by this or any other such amendment" at the end of the last sentence of the measure. #124 does not include this phrase. However, the phrase adds emphasis to the intent to override competing measures but does not alter the purpose. The two measures are substantively the same.

ARGUMENT

The measure contains three subjects

Objectors contend that the Board should have set titles because #123 contains only one subject. For the following reasons, the Court must reject this argument.

Colo. Const. art. V, § 1(5.5), which states:

> No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in the title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. 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.

The Board must abide by the single subject rule. Thus, the Board cannot set titles for a measure that contains incongruous subjects "having no necessary or proper connection, for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits." Section 1-40-106.5(1) (e) (I), C.R.S. (2007). Likewise, the Board cannot set a measure that would cause surprise and fraud to be practiced upon the voters. Section 1-40-106.5(e) (II), C.R.S. (2007).

A proposed initiative violates the single subject rule if "it relates to more than one subject, and has at least two distinct and separate purposes that are not dependent upon or connected with each other." *In re Title, Ballot Title and Submission Clause for 2005-2006 #55*, 138 P.3d 273, 277 (Colo. 2006)(*#55*); *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002 #21 and #22*, 44 P.3d 213, 215 (Colo. 2002) (*#21*). A proposed initiative that "tends to effect or to carry out one general objective or purpose presents only one subject." *In re Ballot Title 1999-2000 #25,* 974 P.2d 458, 463 (Colo. 1999). The single subject rule both prevents joinder of multiple subjects to secure the support of various factions and prevents voter fraud and surprise. *In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-02 #43*, 46 P.3d 438, 442 (Colo. 2002) (*#43*).

The Court will not address the merits of a proposed initiative, interpret it or construe its future legal effects. *#21*, 44 P.3d at 215-16; *#43*, 46 P.3d at 443. The Court may engage in a limited inquiry into the meaning of terms within a proposed measure if necessary to review an allegation that the measure violates the single subject rule. *#55*, 138 P.3d at 278. The Court will "examine sufficiently the initiative's central theme to determine whether it contains a hidden purpose under a

broad theme." *In re Title, Ballot Title and Submission Clause for 2007-2008, #17*, 172 P.3d 871, 875 (Colo. 2007) The Court will "determine unstated purposes and their relationship to the central theme of the initiative." *#55,* 138 P.3d at 278. If the unstated theme is consistent with the general purpose, the single subject requirement will be met. *Id.*

The Board correctly refused to set a title because the measure, on its face, has three subjects. The first sentence of the measure prohibits an employer from requiring an employee to join or pay dues, assessments or other charges to or for a labor organization. The measure then defines "labor organization" as an employee organization other than what is usually known as a labor union.

The last sentence of the measure creates two additional unrelated subjects. It provides that the definition of "labor organization" as used in the measure "shall prevail over any conflicting definition of "labor organization" in article XVIII, including any provision adopted at the 2008 general election, regardless of the number of votes received by this or any other such amendment." This sentence substantively changes the existing law regarding conflicting provisions in competing amendments. At present, § 1-40-123, C.R.S. (2007) states that "in the case of adoption of conflicting provisions, the one that receives the greatest

number of affirmative votes shall prevail in all particulars as to which there is a conflict." This section does not relate to substantive provisions within the measure, but rather to the method by which the measure may ultimately be enacted.

The case of *In re Title, Ballot Title and Submission Clause and Summary Pertaining to a Proposed Initiative "Public Rights in Waters II,"* 898 P.2d 1076 (Colo. 1995) supports the Board's conclusion. There, the measure adopted a public trust doctrine and required water conservancy and conservation districts to hold elections for certain actions. The court found that these provisions constituted two separate subjects. The court concluded that the public trust doctrine imposed obligations on the state while the election provisions applied only to local districts which had no power to implement the public trust doctrine. *Id.* at 1080.

In #123, the first paragraph and the second sentence of the second paragraph place a substantive responsibility on employers if the measure passes. The last sentence of the measure constitutes an instruction to the courts on how to determine which conflicting measure prevails. These two subjects are incongruous.

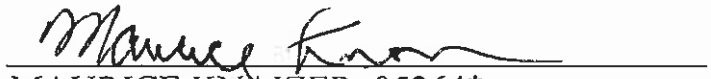
In addition #123 seeks to trump other measures which may be passed by the voters. This Court has disapproved of this tactic. *In re Title, Ballot Title and Submission Clause and Summary for 1997-98 #30*, 959 P.2d 822 (1998). There, a proposed initiative sought to impose a new tax cut under the Taxpayers' Bill of Rights and supplant local election that had tax increases. The Court held that the provision which would potentially undo the results of an election constituted a subject separate from tax cuts. *Id.* at 827.

#123 not only seeks to impose limits on conditions of employment, but it also seeks to affect the outcome of other measures presented to the public for approval. This constitutes a separate subject.

CONCLUSION

For the above-stated reasons, the Court must affirm the Board's refusal to set titles.

JOHN W. SUTHERS
Attorney General



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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **OPENING BRIEF OF TITLE BOARD** upon all parties herein by depositing copies of same, overnight by DHL at Denver, Colorado, this 12th day of June 2008 addressed as follows:

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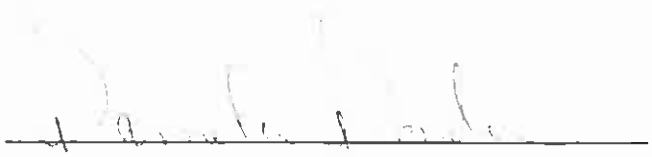

FINAL

Be it Enacted by the People of the State of Colorado:

SECTION 1. Article XVIII of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

Section 17. Limits on conditions of employment. (1) AN EMPLOYER SHALL NOT REQUIRE, AS A CONDITION OF EMPLOYMENT, THAT AN EMPLOYEE JOIN OR PAY DUES, ASSESSMENTS, OR OTHER CHARGES TO OR FOR A LABOR ORGANIZATION.

(2) AS USED SOLELY IN THIS ARTICLE, AND NOTWITHSTANDING ANY OTHER PROVISION OF LAW, "LABOR ORGANIZATION" MEANS ANY ORGANIZATION OF EMPLOYEES THAT EXISTS SOLELY OR PRIMARILY FOR A PURPOSE OTHER THAN DEALING WITH EMPLOYERS CONCERNING GRIEVANCES, LABOR DISPUTES, WAGES, RATES OF PAY, EMPLOYEE BENEFITS, HOURS OF EMPLOYMENT, OR CONDITIONS OF WORK. THIS DEFINITION SHALL PREVAIL OVER ANY CONFLICTING DEFINITION OF "LABOR ORGANIZATION" IN ARTICLE XVIII OF THIS CONSTITUTION, INCLUDING ANY PROVISION ADOPTED AT THE 2008 GENERAL ELECTION, REGARDLESS OF THE NUMBER OF VOTES RECEIVED BY THIS OR ANY OTHER SUCH AMENDMENT.