

<p>Supreme Court, State of Colorado  Court Address:  Colorado State Judicial Building  2 East 14<sup>th</sup> Avenue, Suite 400  Denver, CO 80203</p>	<p>FILED IN THE  SUPREME COURT</p> <p>JUN 05 2008</p>
<p>ORIGINAL PROCEEDING PURSUANT TO  § 1-40-107(2), C.R.S. (2007)  Appeal from the Ballot Title Setting Board</p> <p>IN THE MATTER OF THE TITLE, BALLOT TITLE AND  SUBMISSION CLAUSE FOR 2007-2008 #124</p>	<p>OF THE STATE OF COLORADO  SUSAN J. FESTAG, CLERK</p>
<p><b>Petitioners:</b></p> <p>REED NORWOOD AND CHARLES BADER,  Proponents,</p> <p>v.</p> <p><b>Respondent:</b> JULIAN JAY COLE,  Objector,</p> <p>and</p> <p><b>Title Board:</b>  WILLIAM A. HOBBS, DAN CARTIN, and DAN  DOMENICO</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorney:  Mark G. Grueskin  Isaacson Rosenbaum P.C.  633 17<sup>th</sup> Street, Suite 2200  Denver, Colorado 80202</p> <p>Phone Number: (303) 292-5656  FAX Number: (303) 292-3152  E-mail: mgrueskin@ir-law.com  Atty. Reg. #: 14621</p>	<p>Case Number:</p> <p>08SA200</p>
<p>PETITION FOR REVIEW OF FINAL ACTION OF  BALLOT TITLE SETTING BOARD  CONCERNING PROPOSED INITIATIVE 2007-2008 #124</p>	

Petitioners Reed Norwood and Charles Bader (hereafter "Petitioners"), registered electors of the State of Colorado, hereby submit this petition for review to appeal the decision of the State Title Board in setting the title for Proposed Initiative 2007-2008 #124.

### **STATEMENT OF THE CASE**

A. Procedural History of Initiative #124.

Petitioners proposed Initiative 2007-2008 #124. The measure prohibits employers, as a condition of employment, from requiring that employees associate with certain organizations addressed as "labor organizations," defines "labor organization," and provides that Initiative #124 would prevail over any conflicting definition in the article of the Constitution being amended, including any measure on the 2008 ballot. A review and comment hearing was held on May 9 before designated representatives of the Offices of Legislative Council and Legislative Legal Services to address certain technical and substantive questions dealing with this proposal.

On May 9, Petitioners submitted a final version of Initiative #124 to the Secretary of State, Exhibit A, and the Title Board held a hearing on May 21, 2008 to establish the initiative's single subject and set a title. Julian Jay Cole, Objector, filed a Motion for Rehearing alleging lack of jurisdiction, based upon changes to the draft initiative that exceeded the scope of the legislative review and comment

memo and alleged violations of the single subject requirement. Cole also objected to the accuracy of the title set. Colo. Const., art. V, sec. 1(5.5). In response to the Motion for Rehearing and oral argument, the Title Board rejected the allegation that substantial changes were made to the initiative draft that were not made in response to comments of the legislative staff. As to single subject, though, the Board changed its previous decision that the initiative was one topic by a two-to-one vote. The two Board members voting in the majority had different reasons for their conclusion that this measure violated single subject requirements. Because of the Board's single subject decision, no adjustments to the wording of the ballot title were considered or approved.

B. Jurisdiction.

Pursuant to § 1-40-107(2), C.R.S., any person who submits a motion for rehearing to the Title Board or any person who appears before the Board in connection with such motion may appeal the decision on the Title to this Court. Such appeal must contain certified copies of proposed initiative, the motion for rehearing, and the title set, *see* Exhibit A attached hereto, and must be within five days of the Board's decision. That time period excludes a weekend that intervenes between the Board meeting and the expiration of the five-day period. Matter of Title, Ballot Title and Submission Clause, and Summary for 1997-98 #62, 961 P.2d 1077, 1079 (Colo. 1998). Therefore, this appeal is timely filed.

## GROUNDS FOR APPEAL

The Title Board should have set a ballot title for #124, and its failure to do so was in error. The following is an advisory list of issues to be addressed in Petitioners' brief:

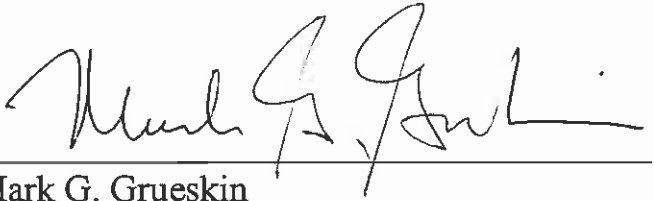
1. After deciding at the first hearing that the measure comprises a single subject, the Title Board erred in reversing that ruling and in failing to find that the initiative addresses one topic: limiting the conditions of employment as to certain organizations defined in the measure as "labor organizations."
2. The single subject requirement does not prevent an initiative from having an effect that is potentially inconsistent with another measure on the same ballot.
3. The single subject requirement does not prevent an initiative from specifying that it will prevail over any conflicting definition in the constitutional article being amended, including one in a measure on the same ballot.
4. The ballot title originally set by the Board accurately and fairly reflected the intent of the measure.

**PRAYER FOR RELIEF**

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the title set for Initiative #124 comprised a single subject and that the title set by the Title Board be approved by the Court or, in the alternative, that the title set by the Board be amended in such manner as the Court deems appropriate.

Respectfully submitted this 5<sup>th</sup> day of June, 2008.

**ISAACSON ROSENBAUM P.C.**

By:   
Mark G. Grueskin

**ATTORNEYS FOR PETITIONERS**

Petitioners' addresses:

8071 S. Lamar Street  
Littleton, CO 80128-5890

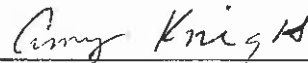
4859 Herndon Circle  
Colorado Springs, CO 80920-7051

**CERTIFICATE OF SERVICE**

I hereby certify that on the 5<sup>th</sup> day of June, 2008, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2007-2008 #124** was sent via facsimile and placed in the United States mail, postage prepaid, to the following:

Scott Gessler  
Hackstaff Gessler LLC  
1601 Blake Street, Suite 310  
Denver, Colorado 80202

Maurice G. Knaizer, Esq.  
Deputy Attorney General  
Colorado Department of Law  
1525 Sherman Street, 6<sup>th</sup> Floor  
Denver, CO 80203

  
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**STATE OF COLORADO**

**DEPARTMENT OF  
STATE**

**CERTIFICATE**

I, **MIKE COFFMAN**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the text, motion for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2007-2008 #124".....

..... **IN TESTIMONY WHEREOF** I have unto set my hand .....  
and affixed the Great Seal of the State of Colorado, at the  
City of Denver this 5<sup>th</sup> day of June, 2008.

A handwritten signature in black ink that reads "Mike Coffman".

SECRETARY OF STATE

RECEIVED

MAY 10 2008  
ELECTIONS  
SECRETARY OF STATE

#124

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, INCLUDING ANY PROVISION ADOPTED AT THE 2008 GENERAL ELECTION.



Reed Norwood  
8071 S. Lamar Street  
Littleton, CO 80128

Charles Bader  
4859 Herndon Circle  
Colorado Springs, CO 80920-7051

May 9, 2008

via **HAND DELIVERY**

Ms. Cesi Gomez  
Colorado Secretary of State  
1700 Broadway, Suite 270  
Denver, Colorado 80290

RECEIVED  
MAY 10 2008  
ELECTIONS  
SECRETARY OF STATE

*Ch. 2.5/10 m.*

Re: Initiative 2007-2008 #123  
Initiative 2007-2008 #124

Dear Ms. Gomez:

Attached please find the required drafts of Initiative 2007-2008 #123 and 2007-2008 #124 which our office is filing on behalf of the Proponents for each measure.

Sincerely,



Amy Knight  
Legal Assistant to Mark G. Grueskin

aak  
enclosure  
1830720\_1.doc

**RECEIVED**

MAY 28 2008

*C. H. K. P. M.  
A. H. K. P. M.*

**ELECTIONS  
COLORADO TITLE SETTING BOARD  
SECRETARY OF STATE**

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In re Title and Ballot Title and Submission Clause for Initiative 2007-2008 #124

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**MOTION FOR REHEARING**

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On behalf of Julian Jay Cole, a registered elector of the State of Colorado, the undersigned hereby moves for a rehearing of the title, ballot title, and submission clause for Initiative 2007-2008 #124 "Conditions of Employment", set by the Title Board on May 21, 2008. As grounds, Cole states as follows:

The Title Board does not have jurisdiction to set a title because the final version of the initiative, as filed with the Title Board, contains a substantive change from the version of the initiative filed with legislative council and the office of legislative legal services, and the change was not properly in response to a comment from legislative council and the office of legislative legal services in violation of C.R.S. § 1-45-105(2).

The proposed initiative violates Colorado's single subject requirement contained in C.R.S. § 1-40-106.5 because it contains the following separate subjects:

1. The initiative states what cannot be defined as a labor organization.
2. The initiative states that an employer cannot, as a condition of employment, belong to an undefined category of organizations labeled "labor organizations."
3. The initiative purports to apply to all current or future usages of the term "labor organization" in Article XVIII of the Colorado Constitution, regardless of the manner in which the term "labor organization" may be used in that Article.
4. The initiative creates new rules for resolving conflicts between this initiative and other initiatives appearing on the 2008 statewide ballot.

The title set by the Board is misleading, inaccurate, and incomplete for the following reasons:

1. The title misleadingly states that it applies to participation to "certain" organizations as a condition of employment, when in fact the initiative does not apply to "certain" organizations.
2. The title is confusingly similar to the title for Proposed Initiative No. 41, currently

certified for the ballot as Amendment 47.

3. The title is confusingly similar to the title for Proposed Initiative No. 123.
4. The title is misleading, because it states that the single subject concerns participation in certain organization as a condition of employment, when in fact the single subject of the initiative is to redefine the term "labor organization" in a manner contrary to previous definitions and contrary to normal language usage.
5. The title is misleading, because the initiative does not define a labor organization, but rather defines what a labor organization is not.
6. The title is incomplete and misleading, because it does not inform voters that the use of the term "labor organization" directly contradicts other usages of the term in Colorado law.

Respectfully submitted this 28th day of May, 2008.

By: 

Scott E. Gessler, Reg. No. 28944

Hackstaff Gessler LLC

1601 Blake St., Suite 310

Denver, Colorado 80202

(303) 534-4317

(303) 534-4309 (fax)

sgessler@hackstaffgessler.com

Attorney for Julian Jay Cole

Address of Petitioner:  
18977 W. 55th Cir.  
Golden, CO 80403

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28th day of May, 2008, a true and correct copy of the foregoing **MOTION FOR REHEARING** was placed in the United States mail, postage prepaid, to the following:

Mark Grueskin, Esq.  
Isaacson Rosenbaum P.C.  
633 17<sup>th</sup> Street  
Suite 2200  
Denver, Colorado 80202



---

**Cesiah Gomez**

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**From:** Barbora Hurd [bhurd@hackstaffgessler.com]  
**Sent:** Wednesday, May 28, 2008 4:49 PM  
**To:** Cesiah Gomez  
**Cc:** 'Scott Gessler'; general@hackstaffgessler.com  
**Subject:** Motions for Rehearing (#113, #123, #124)  
**Attachments:** Motions for Rehearing 113, 123, 124.pdf

Dear Cesi,

Attached please find motions for rehearing regarding ballot initiative # 113, #123 and #124. The originals will be couriered to your office tomorrow morning. Please do not hesitate to call if you have any questions or need additional information.

Sincerely,

Barbora Hurd  
Paralegal to Scott E. Gessler, Esq.

Hackstaff Gessler, LLC  
1601 Blake Street, Suite 310  
Denver, Colorado 80202

ph. (303) 534-4317  
fax (303) 534-4309  
[bhurd@hackstaffgessler.com](mailto:bhurd@hackstaffgessler.com)

\*\*\*\*\*  
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**Ballot Title Setting Board**

**Proposed Initiative 2007-2008 #124<sup>1</sup>**

*Hearing May 21, 2008:*

*Single subject approved; staff draft amended; titles set.*

*Hearing adjourned 9:53 a.m.*

*Hearing May 30, 2008:*

*Motion for Rehearing granted; title setting denied on the basis that the measure does not constitute a single subject.*

*Hearing adjourned 11:00 a.m.*

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<sup>1</sup> Unofficially captioned "Conditions of Employment" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.