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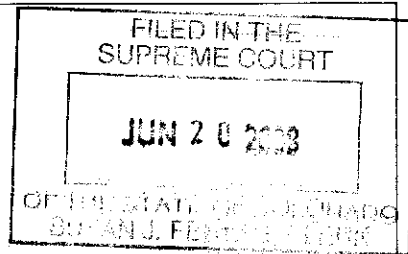
SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	 FILED IN THE SUPREME COURT JUN 2 0 2008
ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2007) Appeal from the Ballot Title Board IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2007-2008 #124, REED NORWOOD AND CHARLES BADER, PROPONENTS, Petitioners, v. JULIAN JAY COLE, OBJECTOR, AND WILLIAM A. HOBBS, DAN CARTIN AND DAN DOMENICO, TITLE BOARD, Respondents.	▲ **COURT USE ONLY** ▲ Case No.: 08 SA 200
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ANSWER BRIEF OF TITLE BOARD

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William A. Hobbs, Dan Cartin and Dan Domenico, as members of the Title Board, hereby submit their Answer Brief. The Board's Opening Brief discussed the additional subjects of the amendment to the Initiative Code and the impact of #124 on another initiative. This Answer will focus on the latter subject.

ARGUMENT

I. #124 Contains Multiple Subjects.

Mr. Hobbs articulated the concerns about the substantive impact of #124 on a pending initiative:

> I am inclined, still, to believe that the measure violates the single subject rule. I—I think it's a really close call. I can—in my own mind, I can articulate it either way. I'm—I'm actually not troubled by the part of 123—123 that –that changes the –for purposes of just this proposal, changes the statutory provision about when there's a conflict, the measure with the most votes prevails. It—from a single subject point of view, I think in furtherance of the purpose of the measure, so I—I personally don't see a single subject problem with that.
>
> And I think I would not see a single subject problem if all it did was trump Amendment 47. And regardless of how it's drafted, I mean, it could be argued that it's surreptitious the way—the way it trumps or attempts to trump Amendment 47 by defining labor organization to be anything other than a labor organization; but again, if that's all it did, that's to me still a single subject, and there's nothing—as we were discussing yesterday. I think there's no prohibition against surreptitious drafting, if that's what it is. It would still be a single subject.

Where my difficulty comes in is that the measure goes on to prohibit providers from requiring participation in organizations other than the Amendment 47 organizations, and the question is, is –is that –in my mind, the question is, is that a separate subject. You know, I think it probably is. I—again, I can argue it the other way, that it is all—the measure is about the subject of, I think, as we expressed in the title, participation in certain organizations as a condition of employment, and—and it may very well be that a group of proponents can say that this is a public policy area that—that they want to speak to, maybe because Amendment 41 raised the issue, and the way they want to speak to this issue is to say that there are some situations where employers should not require employees to be participants in certain organizations and other cases where employers could. That's permissible. And looked at from that point of view, maybe this is all one subject.

It—it is troubling to me in trying figure out if the labor union side of this and the non-labor union side that are two separate subjects, that—they really—or it seemed like they are really two inherently different types of situations, and this—this really kind of goes to the heart of where I'm struggling with it. It's—if this really were about the public policy issue of participation in organizations and the ability of employers to require it, that steers me towards defining single subject requirements, but I'm really having trouble accepting that. That sounds more like Public Rights in Water.

Tr. May 30, 2008, p. 76, ll.19-25, p.77, p. 78, ll. 1-23.

Mr. Hobbs referred throughout his analysis to Initiative 41[1], attached hereto as Exhibit A. It provides, "No person shall, as a condition of employment, be required to: (I) be a member of a labor union; and (II) pay any dues, assessments, or other charges of any kind to a labor union or to any charity or other third party, in lieu of such payments." Initiative 41 defines a "labor union" as "any organization of any kind, or agency or employee representation committee or organization, that exists for the purpose, in whole or in part, of dealing with employers concerning wages, rates or pay, hours of work, other conditions of employment, or other forms of compensation; any organization that exists for the purpose of collective bargaining or dealing with employers concerning grievances; and any organization providing other mutual aid or protection in connection with employment."

Initiative #124 states that "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." It defines "labor organization" to mean "any organization of employees that exists solely or primarily for a purpose other than

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[1] The proponents of Initiative 41 gathered sufficient signatures to have the measure placed on the ballot. The ballot designation is Amendment 47.

dealing with employers concerning grievances, labor disputes, wages, rates of pay, employee benefits, hours of employment, or conditions of work."

Superficially, the definition of "labor union" in Initiative 41 differs from the definition of "labor organization" in #124. The former is an organization designed to address working conditions, while the latter covers organizations dealing with matters other than working conditions. Based upon a plain reading of these definitions, each measure prevents employers from requiring membership in certain organizations, but the types of organizations covered by the respective measures differ substantively. Thus, the two measures have different purposes. One intends to prohibit employers from requiring membership in labor unions while the other intends to prohibit employers from requiring membership in organizations other than labor unions. If #124 stopped at the end of the definition, there would be no questions that it contained a single subject.[2]

The single subject violation arises as a result of the last sentence of #124. This sentence states, "This definition shall prevail over any conflicting definition of 'labor organization' in article XVIII, including any provision at the 2008 general

[2] The Board does not contest the right of Proponents to incorporate uncommon definitions. The single subject dispute arises from a sentence that is not part of the definition.

election." Proponents concede that this sentence is intended to supersede the prohibition against mandatory union membership or union dues payments in #41 if both measures pass. (Proponents' Opening Brief, p.13.) Thus, Proponents seek to (1) prohibit mandatory membership in non-labor union organizations, (2) authorize mandatory membership in labor unions or mandatory payment of union dues, and (3) override another election in which voters approve a prohibition against compelled union membership and union dues.

The holding in *In re Title, Ballot Title and Submission Clause for 2005-2006 #55*, 138 P.3d 273 (Colo. 2006) (*#55*) mandates the conclusion that #124 has multiple subjects. In *#55*, the proposed initiative would have prohibited all governmental agencies from providing any non-emergency services to persons who are not lawfully present within the United States. The Court found that emergency services included two purposes: (1) decreasing taxpayer expenditures that benefited individual members of targeted groups, and (2) denying access to other administrative services that were unrelated to the delivery of individual welfare benefits. The Court found that the measure affected the target group (persons in this country illegally) and also the citizenry in general through the impairment of regulatory, licensing and dispute resolution services. *Id.* at 282.

A similar dichotomy exists in #124. It affects the associational rights of employees outside of work and the associational rights of employees at their place of work. Some persons may wish to prohibit employers from placing restrictions on employees' rights outside the workplace but not prohibit them from restricting employees' rights for matters affecting the workplace. Matters affecting employees' rights of association outside the workplace are insufficiently connected to employees' rights of association in the workplace.

Proponents argue that concern about 124's reach is a post-election issue. (Proponents' Opening Brief, pp. 13-15.) This statement is incorrect as a matter of law. Both the Board and this Court must review a measure to determine whether (1) it relates to more than one subject, and (2) has at least two distinct and separate purposes. *In re Title, Ballot Title and Submission Clause for 2007-2008 #61*, 2008 WL 2081574 (Colo.) (May 16, 2008) *2. The Board and the Court must engage in some interpretation in order to determine whether a measure contains a single subject. *#55*, 138 P.3d at 278.

II. Review of the Titles.

Proponents and Opponents differ on the approach the Court should take if it decides that #124 has a single subject. Opponents ask the Court to remand the

matter to the Board to set a title. Proponents suggest that the Court should consider arguments about the title, set the title and immediately issue the mandate.

The Board set a title at its initial hearing upon a finding that the measure had a single subject. Opponent then filed a motion for rehearing in which he contested the finding of a single subject and the wording of the titles. After the Board reversed its finding on the single subject issue, the Board did not consider any objections to content of the titles. It concluded that it would be difficult to create titles stating the single subject because the measure did not have a single subject. Tr. May 30, 2008, p. 95, ll. 24-25; p. 96, ll. 1-11.

The Board does not take a position on whether the Court should remand the titles for reconsideration of the titles or issue the mandate immediately. However, the Board offers three comments. The Board notes that the General Assembly intended to expedite review of actions of the Board in light of the fundamental right of the initiative. *See, In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 No. 219,* 999 P.2d 819, 821 (Colo. 2000). Under long-standing case law, the Court has the power to instruct the Board on the content of the titles under the circumstances presented in this case. *In re Title Ballot Title and Submission Clause for 2007-2008 #61*, 2008 WL 2081574 (Colo.) (May 16,

2003)*4. Thus, the Court can affirm the titles originally set by the Board or reword the titles. *In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito,* 873 P.2d 28, 34 (Colo. 1993). It is not required to remand the matter to the Board to reconsider the titles.

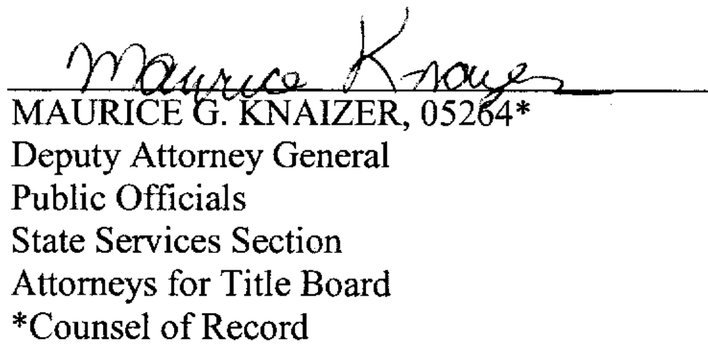
In support of his argument that the Court should remand the matter to the Board for further hearing on the titles, Opponent states that a failure to remand will deprive the public of its right "to comment on motions for rehearing and provide input into the Title Board's process." (Opponent's Opening Brief, p. 16). It is important to note that the public did have the opportunity to present comments at both the initial hearing and the motion for rehearing on #124.

Proponents argue that the Court should suspend its rules concerning the issuance of the mandate because the deadline for placing the measure on the ballot for the 2008 election is at hand. (Proponents' Opening Brief, at p. 30.) It is important to note that Proponents' dilemma is caused in part by their decision to wait until the end of this initiative cycle to introduce their proposal.

CONCLUSION

For the reasons stated in the Board's briefs, the Court must affirm the Board's action.

JOHN W. SUTHERS
Attorney General



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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **ANSWER BRIEF OF TITLE BOARD** upon all parties herein by depositing copies of same, overnight by DHL at Denver, Colorado, this 20th day of June 2008 addressed as follows:

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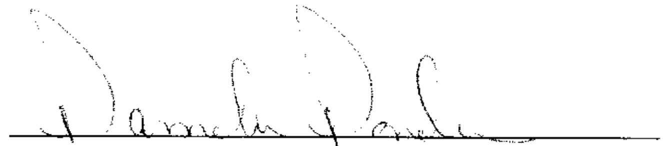

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Be it Enacted by the People of the State of Colorado:

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

Section 16. Right to work. (1) THIS AMENDMENT SHALL BE KNOWN AND MAY BE CITED AS THE "COLORADO RIGHT TO WORK AMENDMENT".

(2) (a) NO PERSON SHALL, AS A CONDITION OF EMPLOYMENT, BE REQUIRED TO:

(I) BE A MEMBER OF A LABOR UNION; AND

(II) PAY ANY DUES, FEES, ASSESSMENTS, OR OTHER CHARGES OF ANY KIND TO A LABOR UNION OR TO ANY CHARITY OR OTHER THIRD PARTY, IN LIEU OF SUCH PAYMENTS.

(b) NOTHING IN THIS SECTION SHALL PREVENT ANY PERSON FROM VOLUNTARILY BELONGING OR VOLUNTARILY PROVIDING FINANCIAL SUPPORT TO A LABOR UNION.

(3) ANY PERSON WHO DIRECTLY OR INDIRECTLY VIOLATES ANY PROVISION OF THIS SECTION COMMITS A MISDEMEANOR AND UPON CONVICTION THEREOF SHALL BE PUNISHED BY A FINE IN AN AMOUNT EQUIVALENT TO THE MOST STRINGENT MISDEMEANOR CLASSIFICATION PROVIDED BY LAW.

(4) THIS SECTION SHALL APPLY TO ALL UNION EMPLOYMENT CONTRACTS ENTERED INTO AFTER THE EFFECTIVE DATE OF THIS SECTION AND SHALL APPLY TO ANY RENEWAL OR EXTENSION OF ANY EXISTING UNION CONTRACT.

(5) AS USED IN THIS SECTION, "LABOR UNION" MEANS ANY ORGANIZATION OF ANY KIND, OR AGENCY OR EMPLOYEE REPRESENTATION COMMITTEE OR ORGANIZATION, THAT EXISTS FOR THE PURPOSE, IN WHOLE OR IN PART, OF DEALING WITH EMPLOYERS CONCERNING WAGES, RATES OF PAY, HOURS OF WORK, OTHER CONDITIONS OF EMPLOYMENT, OR OTHER FORMS OF COMPENSATION; ANY ORGANIZATION THAT EXISTS FOR THE PURPOSE OF COLLECTIVE BARGAINING OR OF DEALING WITH EMPLOYERS CONCERNING GRIEVANCES; AND ANY ORGANIZATION PROVIDING OTHER MUTUAL

Ex A

AID OR PROTECTION IN CONNECTION WITH EMPLOYMENT.

SECTION 2. Effective date. This amendment shall take effect upon proclamation of the vote by the governor.