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SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	FILED IN THE SUPREME COURT SEP 10 2007 OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK
ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2006) Appeal from Ballot Title Board	▲ COURT USE ONLY ▲
IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2007-2008 #38 DOROTHY WRIGHT, OBJECTOR Petitioner, v. RYAN FRAZIER AND JULIAN JAY COLE, PROPONENTS AND WILLIAM A. HOBBS, DAN CARTIN, AND DAN DOMENICO, TITLE BOARD, Respondents.	Case No.: 07SA258
JOHN W. SUTHERS, Attorney General MAURICE G. KNAIZER, Deputy Attorney General* 1525 Sherman Street, 5th Floor Denver, CO 80203 (303) 866-5380 Registration Number: 05264 *Counsel of Record	

OPENING BRIEF OF TITLE BOARD

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

STATEMENT OF THE ISSUES

The Board adopts the statement of issues as set forth in the Petition for Review.

STATEMENT OF THE CASE

On July 12, 2007 Ryan Frazier and Julian Jay Cole, the proponents ("Proponents), submitted Initiative 2007-2008 #38 (#38) to the Board. On August 1, 2007 the Board determined that the content of #38 constituted a single subject and proceeded to set a title. On August 8, 2007 Dorothy Wright, the objector ("Objector"), filed a motion for rehearing. She contended that the measure contained more than one subject and that the titles did not clearly set forth the true meaning of the proposal. On August 15, 2007 the Board granted the motion in part by amending the titles and denied the motion in all other respects. The Objectors filed a timely appeal with this Court. A certified copy of the entire administrative record has been filed.

STATEMENT OF THE FACTS

#38 purports to amend the Colorado Constitution by adding section 16 to article XVIII of the Colorado Constitution. As relevant to this appeal, the measure would: (1) preclude requirements that an employee (a) resign or refrain from voluntary affiliation with or voluntary financial support of a labor organization; (b) become or remain a member of a labor organization; (c) pay dues, assessments, or other charges of any kind or amount to a labor organization; or (d) pay money to a third party for the equivalent of dues; and,

(2) make unlawful any deduction from wages, earnings or compensation of employees' union dues without the consent of the employees.

SUMMARY OF THE ARGUMENT

The measure includes only one subject: making voluntary the relationship between workers employed or seeking employment in unionized workplaces.

The inclusion of a provision regarding deduction of union dues from employees' wages is directly related to conditions imposed on the relationship between employees and labor organizations. The deduction of dues is not logrolling or surreptitious.

The titles are not misleading. The statement of the single subject is only one part of the title. The titles must be read as whole, and, when read as a whole, the titles unambiguously reflect the content of the measure.

ARGUMENT

I. The Measure Contains Only One Subject: Setting Standards Governing The Relationship Between Employees and Labor Organizations.

A. Introduction

Objectors contend that the Board should not have set titles because #38 contains more than one subject, thereby violating 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.

A proposed initiative violates the single subject rule if (1) "it relates to more than one subject, and (2) 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 "determine unstated purposes and their relationship to the central theme of the initiative." *Id.* If the unstated theme is consistent with the general purpose, the single subject requirement will be met. *Id.* The single subject requirement must be liberally construed to avoid the imposition of undue restrictions on initiative proponents. *In re Title, Ballot Title*

and Submission Clause, and Summary for 1997-98 No. 74, 962 P. 2d 927, 929 (Colo. 1998).

B. The "Right to Work" provisions and the "Payroll Deductions" provisions are closely related.

Objector contends that there is no relationship between the "right to work" provisions of the measure and the prohibition against payroll deductions without employee consent. This Court has disagreed with this contention:

> The fact that section 80-4-2(8) defines 'all union agreement in terms of a union 'membership' requirement and the agreements herein did not require membership per se, does not deter us from our conclusion. *Compulsory monetary support of a union is the 'practical equivalent' of compulsory membership.* [Citations omitted]. In our opinion, any financial obligation imposed upon employees pursuant to a collective bargaining agreement executed and sought to be enforced in Colorado has features of compulsory unionism and as such is to be considered an 'all-union' agreement....

(Emphasis added.) *Communications Workers of America v. Western Electric Company, Inc.*, 191 Colo. 128, 142, 551 P.2d 1065, 1075 (1976).

The Florida Supreme Court also recognized the close relationship between "right to work" provisions and provisions regarding payroll deductions. *Florida Education Assoc/United v. Public Employees Relations Com'n*, 346 So.2d 551

(Fla. 1977). Florida's constitution includes a right to work provision. A commission proposed a "fair share rule" under which public employees who were not union members would be required to have certain union expenses deducted from their wages. The court found that this provision would violate the "right to work" provision. *Id.* at 552. By concluding that required deductions from wages are closely related to the "right to work" provision, the court acknowledged their close relationship.

The Oklahoma Supreme Court recently decided a single subject challenge to a measure substantially similar to #38. *Eastern Oklahoma Building and Const. Trades Council v. Pitts*, 82 P.3d 1008 (Okla. 2003). The voters of Oklahoma approved a measure that included provisions making joining a union voluntary and prohibiting the deduction of union dues without the consent of employees. *Id.* at The measure included many of the same provisions at issue in this case. The court rejected a single subject challenge, holding that "the right to work amendment's provisions all relate to the regulation of union activity *vis a vis* workers employed or seeking employment in unionized workplaces." *Id.* at 1014.

The Alabama Supreme Court found that an even broader right-to-work law contained a single subject. *Alabama State Federation of Labor v McAdory*, 18 So.

2d 810 (Ala. 1944). Among other matters, the law required labor organizations to file copies of their constitutions and by-laws with the state, *id.* at 821; prohibited workers from refusing to handle non-union goods, *id.* at 825; declared certain types of strikes unlawful, *id.* at 827; made it unlawful for a union to demand any fee as a condition of work, excluding dues and assessments *id.* at 828, 829; prevented management personnel from becoming union members, *id.* at 829; and prevented unions and employer organizations from making contributions to political campaigns, *id.* at 830. The Court rejected the single subject challenge, finding "that the subject matter concerns labor and the regulation of labor organizations." *Id.* at 816.

C. The measure is not surreptitious.

Objector also claims that the measure violates the single subject requirement because it surreptitiously includes a "right to work" provision with a "paycheck protection" provision. This argument must be rejected.

A measure is surreptitious if it hides or buries purposes unrelated to an initiative's central theme. *In re Title and Ballot Title and Submission Clause for 2005-2006 #55*, 138 P.2d 273, 277 (Colo. 2006). If a measure includes a result that will clearly occur but is not adequately stated in the measure and is not sufficiently related to the measure, it is surreptitious. *In re Proposed Initiative for*

1997-1998 Nos. 84 and 85, 961 P.2d 456, 461 (Colo. 1998) (mandatory program reductions hidden in measure effecting tax cuts.)

The inclusion of the prohibition against deduction from wages without employee consent is not hidden or buried. It is clearly stated in paragraph 3 of the measure. Because language is clearly expressed in the measure, the measure is not surreptitious.

II. The titles are fair, clear and accurate.

Section § 1-40-106(3), C.R.S. (2006) establishes the standard for setting titles. It provides:

> In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general effect of a "yes" or "no" vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly state the true intent and meaning thereof, together with the ballot title and submission clause, shall be completed within two weeks after the first meeting of the title board...Ballot titles shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and shall be in the form of a question which may be answered "yes" (to vote in favor of the proposed law or constitutional amendment) or "no" (to vote against the proposed law or constitutional amendment and which shall unambiguously state the principle of the provision sought to be amended or repealed.

The titles must be fair, clear, accurate and complete. *In re Title, Ballot Title and Submission Clause and Summary for 1999-00 #256*, 12 P.3d, 246, 256 (Colo. 2000). However, the Board is not required to set out every detail. *#21*, 44 P.3d at 222. In setting titles, the Board may not ascertain the measure's efficacy, or its practical or legal effects. *#256*, 12 P.3d at 257; *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #246(e)*, 8 P.3d 1194, 1197 (Colo. 2000). The Court does not demand that the Board draft the best possible title. *#256*, at p. 219. The Court grants great deference to the Board in the exercise of its drafting authority. *Id.* The Court will reverse the Board's decision only if the titles are insufficient, unfair or misleading. *In re Proposed Initiative Concerning "Automobile Insurance Coverage"*, 877 P.2d 853, 857 (Colo. 1994).

Objector contends that the titles are inadequate because the single subject statement "is overly general and does not unambiguously state the principles of the unrelated provisions to be added to the Constitution." The Objector singles out one phrase within the titles and then states that the titles are unclear because the phrase does not adequately summarize the entire measure. The Court must reject this argument.

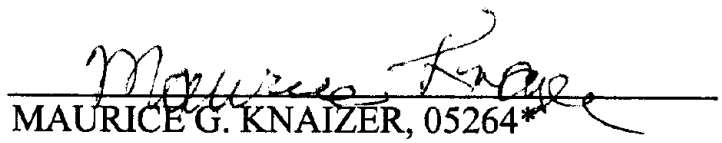
The adequacy of a title is not judged by reviewing one phrase in isolation. The question is whether the title, read a whole, adequately conveys the content of the measure. For example, in *In re Fair Fishing*, 877 P.2d 1355 (Colo.1994), objectors challenged a title on the ground that the phrase "be on the water" used in the title was misleading. This Court rejected the claim, noting that the language of the title, when read as a whole, was sufficiently clear. *Id.* at 1361. See also *In re Trespass-Streams With Flowing Water*, 910 P.2d 21, 25-26 (Colo. 1996).

In this case, the titles, when read as a whole, are clear and comprehensive. The language of the titles closely tracks the language of the measure and accurately reflects its contents.

CONCLUSION

For the reasons stated herein, the Court must approve the action of the Title Board.

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 in the United States mail, Express Mail, postage prepaid, at Denver, Colorado, this 10TH day of September 2007 addressed as follows:

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