

Supreme Court, State of Colorado  
Court Address:  
Colorado State Judicial Building  
2 East 14<sup>th</sup> Avenue, Suite 400  
Denver, CO 80203

ORIGINAL PROCEEDING PURSUANT TO  
§ 1-40-107(2), C.R.S. (2007)  
Appeal from the Ballot Title Setting Board

IN THE MATTER OF THE TITLE, BALLOT TITLE AND  
SUBMISSION CLAUSE FOR 2007-2008 #38

**Petitioner:**

DOROTHY R. WRIGHT,  
Objector  
v.

**Respondents:** RYAN FRAZIER and JULIAN JAY COLE,  
Proponents,

and

**Title Board:**

WILLIAM A. HOBBS, DAN CARTIN, and DAN  
DOMENICO

**Attorney:**  
Mark G. Grueskin  
Isacson Rosenbaum P.C.  
633 17<sup>th</sup> Street, Suite 2200  
Denver, Colorado 80202

Phone Number: (303) 292-5656  
FAX Number: (303) 292-3152  
E-mail: mgrueskin@ir-law.com  
Atty. Reg. #: 14621

FILED IN THE  
SUPREME COURT

AUG 22 2007

OF THE STATE OF COLORADO  
SUSAN J. FESTAG, CLERK

07 SA 258

▲ COURT USE ONLY ▲

Case Number:

**PETITION FOR REVIEW OF FINAL ACTION OF  
BALLOT TITLE SETTING BOARD  
CONCERNING PROPOSED INITIATIVE 2007-2008 #38**

Petitioners Dorothy R. Wright (hereafter "Petitioner"), a registered elector of the State of Colorado, hereby submits this petition for review to appeal the decision of the State Title Board in setting the title for Proposed Initiative 2007-2008 #38, which addresses the unrelated subjects of prohibiting certain conditions on obtaining or retaining employment ("right to work") and procedures for deductions from wages, earnings, or compensation ("paycheck protection").

### **STATEMENT OF THE CASE**

#### **A. Procedural History of Initiative #38.**

Ryan Frazier and Julian Jay Cole (hereafter "Proponents") proposed Initiative 2007-2008 #38. A review and comment hearing, based on a memorandum dated June 28, 2007, was held on #38 before designated representatives of the Offices of Legislative Council and Legislative Legal Services to address certain technical and substantive questions dealing with this proposal.

The Proponents submitted a final version of Initiative #38 to the Secretary of State, Exhibit A, and the Title Board held a hearing on August 1, 2007 to establish the initiative's single subject and set a title. On August 8, Petitioner filed a Motion for Rehearing alleging violations of the single subject requirement. Colo. Const., art. V, sec. 1(5.5). At hearing on August 15, Petitioner objected to the accuracy of

the single subject statement adopted by the Board. In response to the Motion for Rehearing and oral argument, the single subject statement in the ballot title was changed, but in other respects, the Motion was denied.

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.

**GROUND FOR APPEAL**

In violation of §§1-40-106 and -107, C.R.S., the measure violates the single subject requirement, and the title set by the Board is misleading, does not correctly and fairly express the true meaning of the initiative, does not unambiguously state the principle of the provisions to be added to the Constitution, and will lead to

voter confusion. The following is an advisory list of issues to be addressed in Petitioners' brief:

1. The initiative addresses two distinct and separate subjects: (1) enacting a so-called "right to work" law to prohibit certain conditions on obtaining or retaining employment; and (2) adopting a so-called "paycheck protection" law to change procedures for wage deductions that are associated with a labor organization.
2. The Proponents have surreptitiously included the subject of "paycheck protection" in an initiative that otherwise appears primarily dedicated to a different subject, reflected in the measure's self-description as the "Colorado Right to Work Amendment."
3. The single subject statement in the title developed by the Board – "voluntary employee participation in a labor organization" – is overly general and does not unambiguously state the principles of the unrelated provisions to be added to the Constitution.

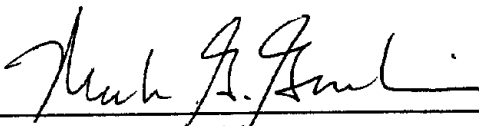
### **PRAYER FOR RELIEF**

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the title set for Initiative #38 comprises multiple subjects and that such title be remanded to the Board with instructions that the measure be

returned to Proponents for failure to comply with the single subject requirement or, alternatively, that the single subject statement in the title be corrected.

Respectfully submitted this 22nd day of August, 2007.

**ISAACSON ROSENBAUM P.C.**

By:   
Mark G. Grueskin

**ATTORNEYS FOR PETITIONER**

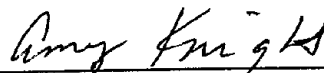
Petitioner's address:  
1922 S. Grant Street  
Denver, CO 80202

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of August, 2007, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2007-2008 #38** was placed in the United States mail, postage prepaid, to the following:

John Berry, Esq.  
1700 Pennsylvania Street, Suite 270  
Denver, CO 80203

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

  
\_\_\_\_\_



# 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 #38".....

.....

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 20<sup>th</sup> day of August, 2007.

SECRETARY OF STATE

EXHIBIT   A

RECEIVED

JUL 12 2007

ELECTIONS / LICENSING  
SECRETARY OF STATE

9.5lum  
jwm

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

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

(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 ANY DUES, FEES, ASSESSMENTS, OR OTHER CHARGES OF ANY KIND OR AMOUNT TO A LABOR ORGANIZATION; OR

(d) PAY TO ANY CHARITY OR OTHER THIRD PARTY, IN LIEU OF SUCH PAYMENTS, ANY AMOUNT EQUIVALENT TO OR PRO RATA PORTION OF DUES, FEES, ASSESSMENTS, OR OTHER CHARGES REGULARLY REQUIRED OF MEMBERS OF A LABOR ORGANIZATION.

(3) IT SHALL BE UNLAWFUL TO DEDUCT FROM THE WAGES, EARNINGS, OR COMPENSATION OF AN EMPLOYEE ANY UNION DUES, FEES, ASSESSMENTS, OR OTHER CHARGES TO BE HELD FOR, TRANSFERRED TO, OR PAID OVER TO A LABOR ORGANIZATION UNLESS THE EMPLOYEE HAS FIRST AUTHORIZED SUCH DEDUCTION.

(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) 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.

(6) AS USED IN THIS SECTION, "LABOR ORGANIZATION" MEANS



ANY ORGANIZATION OF ANY KIND, OR AGENCY OR EMPLOYEE REPRESENTATION COMMITTEE OR UNION, 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 AID OR PROTECTION IN CONNECTION WITH EMPLOYMENT.

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

John Berry  
Attorney at Law  
1799 Pennsylvania Strret, Suite 270  
Denver, Colorado 80203  
303-839-1266 (FAX)  
303-839-8198  
June 26, 2007

*JBerry 5555@aol.com*

HAND DELIVERED

Mr. Kirk Mlinek, Director  
Colorado Legislative Council Staff  
Room 029  
State Capitol Building  
Denver, Colorado 80203

**RECEIVED**

JUL 12 2007 *CB 9:51 AM*  
ELECTIONS / LICENSING  
SECRETARY OF STATE

RE: Initiative filing

Dear Mr. Mlinek:

On behalf of the proponents, I have filing the attached proposed initiative for review and comment by your staff. The proponents of this initiative are:

Ryan Frazier  
19564 E. 59<sup>th</sup> Place  
Aurora, CO 80019

Julian Jay Cole  
2374 Foothills Drive South  
Golden, CO 80401

Please direct all correspondence in regard to this initiative to me. Thank you for your consideration.

Sincerely,



John Berry

RECEIVED

(17) AUG 08 2007

BEFORE THE TITLE SETTING BOARD OF COLORADO .

10 ELECTIONS / LICENSING  
SECRETARY OF STATE

In the Matter of Initiative 2007-08 #38 (Prohibition on Certain Conditions of Employment),  
Ryan Frazier and Julian Jay Cole, Proponents

**MOTION FOR REHEARING**

On behalf of Dorothy R. Wright, a registered elector of the State of Colorado, the law firm of Isaacson Rosenbaum P.C., submits this Motion for Rehearing because Initiative 2007-08 #38 contains multiple subjects.

On August 1, 2007, the Title Board met and found that this initiative meets the single subject requirement. It then amended the staff's draft title and adopted the following ballot title language:

An amendment to the Colorado Constitution concerning participation in a labor organization as a condition of employment, and in connection therewith, prohibiting an employer from requiring that a person refrain from voluntary affiliation with or financial support of a labor organization or requiring that a person be a member or pay any moneys to a labor organization or to any other third party in lieu of payment to a labor organization; prohibiting a deduction of any moneys from an employee's wages, earnings, or other compensation to be paid to a labor organization without prior approval from the employee; and creating a misdemeanor penalty for a person who violates the provisions of the section.

Subsection (2) of the measure prohibits requiring that a person may be employed if he or she: (a) becomes or remains a member of a labor organization; (b) ends a voluntary relationship with a labor organization; (c) pays any money to a labor organization; or (d) pays money to any third party if such payments are required of a labor organization's members. This portion of the initiative reflects the single subject statement that was proposed by staff, endorsed by Proponents, and adopted by the Board: "concerning participation in a labor organization as a **condition of employment.**" (Emphasis added.)

In contrast, Subsection (3) prohibits any wage deduction for "union dues, fees, assessments or other charges" that are "held for, transferred to, or paid over to a labor organization" unless authorized by an employee. This provision is not couched as a "condition of employment" in the initiative text. Instead, subsection (3) is a flat-out ban on wage deductions unless approved by an employee.

Colloquially, these two concepts are known as "right to work" and "paycheck protection." They are not part of the same subject for several reasons.

First, these are substantively separate subjects. "Right to work" presents voters with the question of whether union membership should be a prerequisite to employment. "Paycheck protection" presents voters with the question of how employers determine whether deductions can be taken from employee wages. There is no common theme between these topics, or at least no theme definite enough to pass the single subject test.

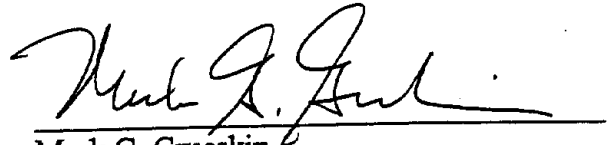
Second, there is no necessary or proper connection between "right to work" and "paycheck protection." See C.R.S. § 1-40-106.5(1)(e)(I). The "paycheck protection" provisions are not functionally related to restricting conditions under which a worker may be employed. Likewise, the "right to work" provisions are not functionally related to the proposed litmus test for authorizing paycheck deductions. Independent considerations factor into each of the two segments of this initiative, and voters should not be forced to balance entirely distinct issues when voting on a ballot measure.

Third, "paycheck protection" is a surreptitious element of Initiative 2007-08 #38 and thus violates the single subject requirement. See C.R.S. § 1-40-106.5(1)(e)(II). Based on the title, voters will think that they are voting on the single subject statement relating to whether a person may be required to belong to a union in order to work at a given job. That is part of this package, but voters will also be voting on a new consent requirement for deductions from wages. The single subject statement endorsed by the Board and the Proponents does not – and could not – encompass this second subject.

WHEREFORE, it is respectfully requested that the ballot title and submission clause adopted for Initiative 2007-08 #38 be stricken and the initiative be returned to the Proponents.

Submitted this 8<sup>th</sup> day of August, 2007.

ISAACSON ROSENBAUM P.C.



Mark G. Grueskin  
633 17<sup>th</sup> Street, Suite 2200  
Denver, CO 80202  
Phone: 303-256-3941  
Fax: 720-974-7970  
Email: [mgrueskin@ir-law.com](mailto:mgrueskin@ir-law.com)

Movant's address:

1922 S. Grant Street  
Denver, CO 80202

**CERTIFICATE OF SERVICE**

I hereby certify that on the 8<sup>th</sup> day of August, 2007, a true and correct copy of the foregoing **Motion for Rehearing** was sent via U.S. mail, first class postage prepaid, to the Proponents, through their legal counsel, at the following address:

John Berry, Esq.  
1799 Pennsylvania Street, Suite 270  
Denver, CO 80203

Amy Knight

## Ballot Title Setting Board

### Proposed Initiative 2007-2008 #38<sup>1</sup>

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning voluntary employee participation in a labor organization, and, in connection therewith, prohibiting an employer from requiring that a person refrain from voluntary affiliation with or financial support of a labor organization, or requiring that a person be a member or pay any moneys to a labor organization or to any other third party in lieu of payment to a labor organization; prohibiting a deduction of any moneys from an employee's wages, earnings, or other compensation to be paid to a labor organization without prior approval from the employee; and creating a misdemeanor criminal penalty for a person who violates the provisions of the section.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning voluntary employee participation in a labor organization, and, in connection therewith, prohibiting an employer from requiring that a person refrain from voluntary affiliation with or financial support of a labor organization, or requiring that a person be a member or pay any moneys to a labor organization or to any other third party in lieu of payment to a labor organization; prohibiting a deduction of any moneys from an employee's wages, earnings, or other compensation to be paid to a labor organization without prior approval from the employee; and creating a misdemeanor criminal penalty for a person who violates the provisions of the section?

*Hearing August 1, 2007:*

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

*Hearing adjourned 3:23p.m.*

*Hearing August 15, 2007:*

*Motion for Rehearing granted in part to the extent Board amended titles; denied in all other respects.*

*Hearing adjourned 3:44 p.m.*

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