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SUPREME COURT, STATE OF COLORADO Court Address: 2 East 14th Avenue Denver, Colorado 80203	
ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2007) Appeal from the Ballot Title Setting Board **Petitioners**: ANDREW PAREDES, CLARA NEVAREZ and MARY PHILLIPS, Proponents, v. **Respondents**: JESSICA PECK CORRY, Opponent, and **Title Board**: WILLIAM A. HOBBS, SHARON EUBANKS, and DANIEL DOMENICO	FILED IN THE SUPREME COURT APR 21 2008 OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK ▲COURT USE ONLY▲
Attorney for Petitioners: Melissa Hart, #34345 2260 Clermont Street Denver, CO 80207 Phone No.: (303) 893-8877 E-mail: geminimrh@yahoo.com	Case No. 08SA89

ANSWER BRIEF OF PETITIONERS

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Mary Phillips, Clara Nevarez and Andrew Paredes ("Petitioners"), being registered electors of the State of Colorado, through their undersigned counsel, respectfully submit the following Answer Brief in support of their Petition for Review of Final Action of the Ballot Title Setting Board Concerning Proposed Initiative for 2007-2008 #61.

I. SUMMARY OF THE ARGUMENT

1. Proposed Initiative #61 Contains a Single Subject:

a. The subject of the proposed initiative is nondiscrimination by the state.

2. Proposed Initiative #61 is Not Confusing.

3. This Court Should Reinstate the Title set by the Title Board at the original hearing on Proposed Initiative #61.

II. ARGUMENT

1. Proposed Initiative #61 Contains a Single Subject: Nondiscrimination by the State.

Proposed Initiative #61 is, as the Title originally set by the Title Board on February 20, 2008 expressed clearly, "an amendment concerning a prohibition against discrimination by the State." The proposed initiative addresses that single subject of nondiscrimination in two sentences. The first expresses a general principle that the State shall not discriminate against or grant preferential treatment

to individuals on the basis of particular characteristics. The second sentence further defines the first sentence by providing that this prohibition shall not be interpreted to limit the State's authority to act, consistent with the U.S. Constitution, to ensure equal opportunity.

In their Opening Briefs, both the Respondent and the Title Board attempt to characterize these two sentences as addressed to different subjects. Bd. Op. Br. at 11-12; Resp. Op. Br. at 8-10. They err in assuming a *particular* definition of the language in the first sentence. The Title Board, for example, asserts that the first sentence of the initiative "contains a broad prohibition against discrimination and preferential treatment, *even if such actions are designed to help those persons or groups in society who may have suffered discrimination in the past.*" Bd. Op. Br. at 5 (emphasis added).[1] There is nothing in the language of the first sentence of Proposed Initiative #61 that requires or even suggests that kind of broad interpretation. Only by adding their own additional language does the Board create a first sentence that seems in tension with the second sentence. But, it is precisely to ensure that the language in the first sentence is *not* interpreted in that overly broad manner that Proposed Initiative #61 includes the second sentence.

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[1] See also Bd. Op. Br. at 7 ("first sentence ... [w]ould preclude the State from enacting or enforcing programs designed to prefer one class of persons over another *that are constitutional under the United States Constitution, as interpreted by the United States Supreme Court* for any reason") (emphasis added).

The Board's insistence on this extremely broad interpretation of the language in the first sentence of Proposed Initiative #61 is troubling in light of the Board's assertion, in the context of arguments over Initiative #31, that "[i]t is not the function of the Board to choose sides in the philosophical and political debates that underlie this measure." Opening Brief of Title Board, In re Proposed Initiative for 2007-2008 #31, Case No. 07SA197, at 13. By insisting on its own particularly broad definition of the language in the first sentence as somehow inevitable, the Board is in fact making a political judgment. It is taking sides in a debate that goes to the heart of what Initiative #61 is about – the best approach to the State's obligation not to discriminate. Only by taking sides – by insisting on a specific, but very contested, understanding of "discrimination" and "preferential treatment" – can the Title Board and the Respondent to Proposed Initiative #61 argue that the second sentence of the initiative is somehow "contradictory" with the first. Bd. Op. Br. at 7.

The single subject requirement is intended to ensure that proposed ballot initiatives include only a single subject; that is, that proponents do not seek to include multiple, *unrelated* subjects in the same proposal. It is well settled that "[t]he single-subject provision will not be violated ... if the 'initiative tends to effect or carry out one general object or purpose.'" *In re Proposed Initiative on*

Parental Choice in Education, 917 P.2d 292, 294 (Colo. 1996) (quoting *In re Proposed Initiative on "Public Rights in Waters II,"* 898 P.2d 1076, 1079 (Colo. 1995)). See also *In re Proposed Initiative for 1999-2000 #25*, 974 P.2d 458, 461 (1999) (quoting *People ex rel. Elder v. Sours*, 31 Colo. 369, 403, 74 P. 167, 177 (1903)). Proposed Initiative #61 does not contain multiple subjects; it contains the single subject of nondiscrimination by the State and takes a particular, defined approach to that subject. The two substantive sentences work together to achieve that single general purpose.

2. Proposed Initiative #61 is Not Confusing.

Proposed Initiative #61 is a short and simple proposed amendment to the Colorado constitution that prohibits discrimination and preferential treatment by the State while preserving the State's authority to enact the kinds of modest equal opportunity programs that have been found constitutional under the strict standards established by the U.S. Supreme Court interpreting the federal Constitution. This is a well-established approach to a state's obligation not to discriminate.

Respondent asserts that this provision is confusing because the second sentence constitutes an "exception that swallows the rule." Resp. Op. Br. at 7. This is simply incorrect. Proposed Initiative #61 seeks to prohibit discrimination and preferential treatment, while preserving a very limited range of equal

opportunity programs as tools available to the State. Proposed Initiative #61 would apply to myriad hiring and other employment decisions, as well as educational policies, and countless public contracts. In those contexts, it would clearly prohibit the State from using, for example, race or gender preference point systems. At the same time, it would ensure that these broad prohibitions were not read so broadly as to eliminate the State's ability to address past and existing discrimination.

Both the Title Board and Respondent argue that the proposed initiative will surprise voters because they will believe they are voting for a blanket prohibition against all forms of discrimination and preferential treatment of any sort. Like some of the arguments made to challenge the single subject of the initiative, this argument assumes that all voters will have the same understanding of "discrimination" and "preferential treatment" that Respondent and the Title Board have adopted. In fact, these concepts are very contested. Proposed Initiative #61 seeks to explain, in its second sentence, that the scope of the preferential treatment prohibited in this initiative would not be so broad as to eliminate programs carefully structured to address past or present discrimination. In this regard, Proposed Initiative #61 seeks an honesty and clarity markedly absent from the debate over Initiative #31. As discussed in Petitioner's Opening Brief, the Title

Board's insistence that Proposed Initiative #61 is confusing is especially troubling in light of its equally strenuous insistence that Initiative #31 was not.

3. This Court Should Reinstate the Title Set by the Title Board at the Original Hearing on Proposed Initiative #61.

At the first hearing on Proposed Initiative #61, the Title Board set a title that accurately reflected the single subject of the proposed initiative and fully informed voters of its content. The Board set this title after an extensive hearing and discussion about the subject and content of the proposed initiative. The title set on February 20, 2008 should be reinstated.

Respondent asserts that the Court should simply remand the initiative to the Title Board to go through the title-setting process again. There is no need for the Court to take this course, when a title has already been considered and set by the Board. Given the late date at which this measure would come back to the Board – almost certainly at its last meeting for this ballot cycle – there is no justification for wasting the Board's time or further impeding Petitioners' ability to bring their proposal to the voters when a title has already been set once for this measure.

III. CONCLUSION

For these reasons, and those set forth in their Opening Brief, Petitioners respectfully request that this Court reverse the actions of the Title Board with

directions to reinstate the title and submission clause set at the original Title Setting Board hearing on February 20, 2008.

Respectfully submitted this 21st day of April, 2008.

By: _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of April, 2008, a true and correct copy of the foregoing **ANSWER BRIEF OF PETITIONERS** was served by hand delivery to the following addressees:

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