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SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	FILED IN THE SUPREME COURT APR 0 1 2008 OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK
ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2006) Appeal from the Ballot Title Setting Board	▲ **COURT USE ONLY** ▲
IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2007-2008, #62 JOSEPH BLAKE, OBJECTOR, Petitioners, v. JOANNE KING AND LARRY ELLINGTON, PROPONENTS; AND WILLIAM A. HOBBS, DANIEL CARTIN AND DANIEL DOMENICO, TITLE BOARD, Respondents.	Case No.: 08 SA 90
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 L. Cartin and Daniel Domenico, in their capacities as members of the Title Board (hereinafter "Board"), hereby submit their Opening Brief.

STATEMENT OF THE ISSUES

The Board adopts the statement of issues set forth in the Objector's Petition for Review.

STATEMENT OF THE CASE

On February 8, 2006 Joanne King and Larry Ellington, the proponents, filed Proposed Initiative #62 (#62) with the Secretary of State. The Board held a hearing to set the titles on February 20, 2008. The Board concluded that #62 had a single subject and set a title.

On February 27, 2008, Joseph Blake, the Objector, filed a motion for rehearing. He alleged that #62 contained multiple subjects; the text of the measure was unclear; the titles were misleading, incomplete, confusing and inaccurate; the titles included a catch phrase; and the proponents made substantive amendments to the measure without first submitting it to the directors of Legislative Council and the Office of Legislative Legal Services.

On March 5, 2008, the board denied the motion for rehearing. The Objector filed this appeal.

STATEMENT OF THE FACTS

#62, if enacted, would amend the Colorado Constitution to establish standards and procedures to discharge or suspend employees. Under the proposal, an employee could not be discharged or suspended unless an employer establishes just cause for the discharge or suspension. The measure defines "just cause". It requires employers to provide employees who have been discharged or suspended written documentation describing the justifications for the disciplinary action. The employee may apply for mediation.

SUMMARY OF THE ARGUMENT

#62 contains only one subject: just cause for discharge or suspension of employees.

The Board understood the measure and therefore set the titles.

The titles set by the Board are fair, clear and accurate. Although the titles do not describe all of the details of the proposed measure, they do state its central features.

The phrases "just cause" and "mediation" are not catch phrases.

The proponents did not amend the measure in violation of the requirement that substantial amendments to the petition must be resubmitted to the directors of

legislative council and legislative legal services, other than an amendment in direct response to the comments made by the directors. The amendments were made in response to suggestions proffered by the directors.

ARGUMENT

I. The measure includes only one subject: just cause for action against an employee by an employee.

The Objectors contend that the Board should not have set titles because #62 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 it "relate[s] to more than one subject and ... [has] at least two distinct and separate purposes which are not dependent upon or connected with each other." *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2005-2006 #55*, 138 P.3d 273, 277

(Colo. 2002)(Colo. 2006) (*#55*) 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. *#55*, 138 P.3d at 277 *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-02 #43*, 46 P.3d 438, 442 (Colo. 2002)(*#43*).

The Court will not address the merits of a proposed measure, interpret it or construe its future legal effects. *#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. *In re Title, Ballot Title and Submission Clause for 2001-2002 #21 and #22*, 44 P.3d 213, 216 Colo. 2002). The single subject rule must be liberally construed to avoid unduly restricting the right of initiative. *In re Title, Ballot Title and Submission Clause, and Summary for 1997-98 No. 74*, 962 P.2d 927, 929 (Colo. 1998). Sections of a measure that include "implementation or enforcement details directly tied to the single subject will not, in and of themselves, constitute a single subject." *Title,*

Ballot Title and Submission Clause, and Summary for 2005-2006 #73, 135 P.3d 736, 739 (Colo. 2006).

#62 has only one subject: establishment of just cause for taking action against an employee. All of the sections of the measure relate to this subject. Section 1 establishes the principle that an employee may not be discharged or suspended without just cause. Section 2 defines "just cause." Sections 3 and 4 describe the process for enforcement. Section 3 requires an employer to provide written documentation justifying the reasons for discharge or suspension. Section 4 creates a mediation process to be used at the behest of the employee. Section 5 authorizes the legislature to enact implementing legislation.

The Objector contended in his motion for rehearing before the Board that the measure contains at least five subjects: (1) elimination of at-will employer-employee relationships; (2) repeal of the State's civil service system under Colo. const. art. XIII; (3) elimination of the employers' right to contract; (4) an unconstitutional interference with the right of access to the courts; and (5) elimination of the right to appeal an adverse ruling by a mediator.

The Objector's claim is without merit. The Objector is asking the Court to determine the measure's efficacy, construction and future application, a task that

the Court cannot perform until the voters have approved the proposal. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #258(A)*, 4 P.3d 1094, 1097-98 (Colo. 2000). The measure does not define "employee" so the question of whether the measure applies to state government employees is unclear. Likewise, the effect on employer-employee contracts is uncertain. The measure does not state whether it is intended to eliminate employee-employer contracts or whether this constitutional provision becomes a part of such contracts.

Finally, the measure does not discuss right of access to courts and due process once a mediator makes a decision. The Objector assumes that the word "final" in section 13(4) (E) of the measure precludes all subsequent court actions or other types of review. However, this term could also mean that no additional conditions precedent must be exhausted prior to filing an action in court.

The measure's relationship to other constitutional provisions and its constitutionality cannot be determined at this phase of the process. Because all sections of the measure are related to its main subject, the Court must conclude that the measure meets the single subject requirement.

II. The titles are fair, clear and accurate.

Section 1-40-106(3), C.R.S. (2007) 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 added, 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 asserts that the title is defective in two ways. First, Objector contends that the titles are misleading and confusing. Second, Objector asserts that the statement of the single subject is "overly general and does not unambiguously state the principles of the unrelated provisions to be added to the constitution." The Court must reject Objector's contentions.

The titles faithfully track the measure. The titles inform the voters that the measure "prohibit[s] the discharge or suspension of an employee by an employer unless the employer has first established just cause". The titles then state that the measure defines "just cause" and summarize the definition. Next, the titles state that the employer must "provide to an employee written documentation of the basis for his discharge or suspension." They explain that the employee may seek mediation and ask for back wages and reinstatement. The titles note that the measure allows the mediator to assess costs for his services and authorizes

attorney's fees to the prevailing parties. Finally, the titles state that the general assembly may enact legislation to facilitate the purposes of the amendment.

Each section of the measure is accurately summarized in the title. Only section 6 is not mentioned in the titles, and section 6 mirrors existing law regarding the effective date of initiated measures and is not a major element of the measure.

The Objector also asserts that the single subject is overly general and does not set forth the principles of the unrelated provisions. The adequacy of the titles cannot be judged by reviewing one phrase in isolation. The question is whether the title, read as 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 argument, 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)

The statement of the single subject is not designed to proffer details. The details are set forth in the trailers. In order to obtain a complete picture of the content of the measure, the titles must be read as a whole. The titles clearly reflect the major elements. To the extent that the Objector is asking that the titles explain the "principles", the Court must reject Objector's argument.

III. The measure does not include catch phrases.

The Objectors contend that the terms "just cause" and "mediator" are catch phrases. The Court must reject this argument.

"'Catch phrases are words that work to a proposal's favor without contributing to voter understanding. By drawing attention to themselves and triggering a favorable response, catch phrases generate support for a proposal that hinges not on the content of the proposal itself, but merely on the wording of the catch phrase." *In re Ballot Title 1999-2000 No. 258(A),* 4 P.3d 1094, 1100 (Colo. 2000). The existence of a catch phrase is determined in the context of contemporary political debate. *In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 #227 and #228*, 3 P.3d 1, 7 (Colo. 2000). The person asserting the existence of a catch phrase must offer convincing evidence. *Id.*

The term "just cause" is nothing more than a statement of the legal standard commonly applied in employment cases:

> "'Issues of 'just cause', or 'good cause,' or simply 'cause' arise when an employee claims breach of the terms of an employment contracting providing that discharge will only be for just cause."

Black's Law Dictionary (8th ed. 2004) 235 (quoting A. Rothstein et al. *Employment Law* 9.7, at 539 (1994). Words that are used as a legal standard cannot be catch

phrases. *In re Title, Ballot Title and Submission Clause, and Summary for 2005-2006 #75*, n. 4 (Colo. 2006) (phrase "term limits" used in prior court opinions not a slogan or catch phrase). Likewise the term "mediation" is a term used in law. Section 13-22-302 (2.4), C.R.S. (2007). Objector has not offered any evidence that these terms are or likely will become a part of a political campaign.

IV. Changes made by the proponents were made in direct response to comments by the directors of Legislative Council and Legislative Legal Services.

The Objector asserts that the proponents should be required to resubmit the initiative because the final version of the draft of the measure submitted to the Board was not in response to changes suggested by legislative staff. The Court must reject this argument.

An original draft of a proposed initiative must be submitted to the directors of legislative council and the office of legislative legal services. The directors hold a public meeting at which they may raise questions and editorial comments. Section 1-45-105(1), C.R.S. (2007). After the meeting, proponents may amend their measure. Any substantial amendment, other than one made in direct response to comments, must be resubmitted to the directors. Section 1-40-105(2), C.R.S. (2007).

The original version of the measure did not include bankruptcy or layoffs due to lack of work as grounds for just cause to terminate or suspend an employee. The directors asked the following question:

> There appears to be no allowance for layoffs due to lack of work or even the bankruptcy of the employer. Is this the proponents' intent.

In response, the proponents added provisions regarding bankruptcy and layoffs due to lack of work. These changes were made in direct response to the comments of the director. As such, the Board could set the titles.

CONCLUSION

For the above-stated reasons, the Board respectfully requests that the Court approve the titles set by the Board.

JOHN W. SUTHERS
Attorney General

MAURICE G. KNAIZER, 05264*
Deputy Attorney General
Public Officials
State Services Section
Attorneys for Title Board
*Counsel of Record

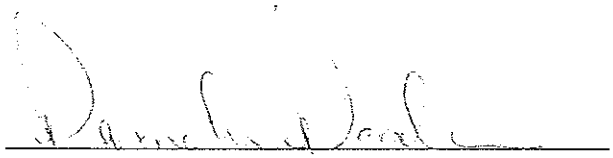
AG ALPHA: STIR GRLVB
AG File: P:\SS\SSKNAIMG\RETAIN\SOS\INIT2007EMPLJUSTCAUSE.DOC

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, overnight by DHL, at Denver, Colorado, this 1st day of April 2008 addressed as follows:

Douglas Friedmash
Fairfield and Woods, PC
1700 Lincoln Street, Suite 2400
Denver, CO 80203-4524

Mark Grueskin
Isaacson and Rosenbaum PC
633 17th Street, Suite 2200
Denver, CO 80202



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, memo from legislative legal services, versions of text submitted, and the rulings thereon of the Title Board on Proposed Initiative "2007-2008 #62".

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 1st day of April, 2008.

SECRETARY OF STATE

APPROVED

FEB 0 8 2008

Final Text
2007-2008
#62

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

SECTION 1. Article XVIII of the Colorado Constitution is amended BY THE ADDITION OF A NEW SECTION 13 to read:

SECTION 13. JUST CAUSE FOR EMPLOYEE DISCHARGE OR SUSPENSION.

(1) NO EMPLOYEE MAY BE DISCHARGED OR SUSPENDED UNLESS THE EMPLOYER HAS FIRST ESTABLISHED JUST CAUSE FOR THE DISCHARGE OR SUSPENSION.

(2) FOR PURPOSES OF THIS SECTION, "JUST CAUSE" MEANS:

(A) INCOMPETENCE;

(B) SUBSTANDARD PERFORMANCE OF ASSIGNED JOB DUTIES;

(C) NEGLECT OF ASSIGNED JOB DUTIES;

(D) REPEATED VIOLATIONS OF THE EMPLOYER'S WRITTEN POLICIES AND PROCEDURES RELATING TO JOB PERFORMANCE;

(E) GROSS INSUBORDINATION THAT AFFECTS JOB PERFORMANCE;

(F) WILLFUL MISCONDUCT THAT AFFECTS JOB PERFORMANCE;

(G) CONVICTION OF A CRIME INVOLVING MORAL TURPITUDE;

(H) FILING OF BANKRUPTCY BY THE EMPLOYER; OR

(J) SIMULTANEOUS DISCHARGE OR SUSPENSION OF TEN PERCENT OR MORE OF THE EMPLOYER'S WORKFORCE IN COLORADO.

(3) AN EMPLOYER SHALL PROVIDE TO ANY EMPLOYEE WHO HAS BEEN DISCHARGED OR SUSPENDED THE EMPLOYER'S WRITTEN DOCUMENTATION OF THE JUST CAUSE USED TO JUSTIFY SUCH DISCHARGE OR SUSPENSION.

(4) (A) ANY EMPLOYEE WHO BELIEVES HE WAS DISCHARGED OR SUSPENDED WITHOUT JUST CAUSE MAY, WITHIN THIRTY DAYS AFTER NOTIFICATION OF THE DISCHARGE OR SUSPENSION, APPLY FOR MEDIATION OF A CLAIM FOR WRONGFUL DISCHARGE OR SUSPENSION. WITHIN ONE HUNDRED TWENTY DAYS AFTER AN EMPLOYEE FILES FOR MEDIATION, A HEARING SHALL BE HELD BEFORE A PRIVATE MEDIATOR. AT HEARING, THE EMPLOYEE AND THE EMPLOYER SHALL BE PERMITTED TO PRESENT EVIDENCE AND MAKE LEGAL ARGUMENT.

(B) A MEDIATOR WHO FINDS THAT AN EMPLOYEE WAS DISCHARGED OR SUSPENDED WITHOUT JUST CAUSE MAY AWARD THE EMPLOYEE ALL BACK WAGES OR REINSTATEMENT IN HIS FORMER JOB OR BOTH.

(C) THE MEDIATOR SHALL ASSESS THE COSTS FOR HIS OR HER SERVICES TO THE LOSING PARTY.

(D) THE MEDIATOR MAY AWARD ATTORNEYS FEES TO THE PREVAILING PARTY AS TO ANY CLAIM MADE BY THE EMPLOYEE.

(E) IN ALL MATTERS DECIDED PURSUANT TO THIS SECTION 13(4), THE DECISION OF THE MEDIATOR SHALL BE FINAL.

(5) THE GENERAL ASSEMBLY MAY ENACT LEGISLATION TO FACILITATE THE PURPOSES OF THIS SECTION, INCLUDING BUT NOT LIMITED TO LEGISLATION ADDRESSING APPLICATIONS FOR MEDIATION AND THE SELECTION OF MEDIATORS BY THE PARTIES.

(6) THIS SECTION SHALL BECOME EFFECTIVE UPON PROCLAMATION OF THE GOVERNOR REGARDING THE VOTES CAST ON THIS AMENDMENT.

Joanne King
8306 Katherine Way
Denver, CO 80221
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February 8, 2008

via HAND DELIVERY
Ms. Cesi Gomez
Colorado Secretary of State
Elections Division
1700 Broadway, Suite 270
Denver, Colorado 80290

Re: Initiative 2007-08 #57
Initiative 2007-08 #62

Dear Ms. Gomez:

Attached please find the required drafts of Initiative 2007-08 #57 and Initiative 2007-08 #62 which our office is filing on behalf of the Proponents for each measure.

Thank you very much.

Sincerely,

Amy Knight

Amy Knight
Legal Assistant to Mark G. Grueskin

aak
enclosure
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COLORADO TITLE SETTING BOARD

In re Proposed Initiative 2007-2008 ("Amendment 62 Cause for Employee Suspension and Discharge"[1])

MOTION FOR REHEARING

On behalf of Joseph B. Blake, a registered elector of the State of Colorado, the undersigned hereby files this Motion for Rehearing in connection with the Proposed Initiative 2007–2008 #62 ("Cause for Employee Suspension and Discharge", hereinafter described as the "Initiative") which the Title Board heard on February 20, 2008.

1. The Board lacks jurisdiction to set a title for this Initiative as it contains multiple, unrelated, subjects in violation of Colo. Const. art. V, § 1(5.5) and Colo. Rev. Stat. § 1-40-106.5. "An initiative violates the single subject requirement when it (1) 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 the Matter of the Title and Ballot Title and Submission Clause for 2005–2006 #55*, 138 P.3d 273, 277 (Colo. 2006). An initiative that joins multiple subjects poses the danger of voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision coiled up in the folds of a complex initiative. *In re Title, Ballot Title and Submission Clause 2007-2008, #17*, 172 P.3d 871, 875 (Colo. 2007), "We must examine sufficiently on initiatives central theme to determine whether it contains hidden purposes under a broad theme." *Id.*

[1] Unofficially captioned **"Cause for Employee Suspension and Discharge"** by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

Initiative 55 sought to prohibit government from providing non-emergency services to persons who were otherwise not lawfully present in the United States. Initiative 55 did not define "non-emergency" and "services", categorize the types of services to be restricted, or set forth the purpose or purposes of restricting non-emergency services. The Colorado Supreme Court rejected Initiative 55 under the single subject rule stating, "We identify at least two unrelated purposes grouped under the broad theme of restricting non-emergency government services: decreasing taxpayer expenditures that benefit the welfare of members of the targeted group and denying access to other administrative services that are unrelated to the delivery of individual welfare benefits." *See In the Matter of the Title and Ballot Title and Submission Clause for 2005–2006 #55, supra,* 138 P.3d at 280; *see also, In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104,* 987 P.2d 249 (Colo. 1999) (proposal that has at least two distinct and separate purposes which are not dependent upon or connected with each other violates the State Constitution's single-subject requirement).

The Supreme Court rejected a proposed ballot initiative which sought to amend the Taxpayer Bill of Rights under the Colorado Constitution because it violated the constitution's single-subject requirement, where the proposed initiative created tax cut, imposed new criteria for voter approval of revenue and spending increases, and imposed likely reductions in state spending on state programs. *See In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 37,* 977 P.2d 845 (Colo. 1999) (citing Colo. Const. Art. V, § 1(5.5); Art. X, § 20).

In *In re Proposed Initiative for 1997-1998 #63,* 960 P.2d 1192, 1200-01 (Colo. 1998), the Court held that the Title Board erred by fixing the titles and summary of the initiative, entitled "Judicial Qualifications," because it contained provisions proposing to change the manner of

selection, powers and procedures of an independent constitutional body, which were unrelated to judicial qualifications. The Court recognized that the theme of the initiative—the entire judicial branch—therefore could not be considered a single subject.

Likewise, in *In re "Public Rights in Waters II"*, 898 P.2d 1076 (Colo. 1995), the Court held that grouping the distinct purposes of water conservation district elections and the "public trust doctrine" under the theme of water did not satisfy the single-subject requirement because such a connection was too broad and too general to make them part of the same subject.

The Colorado Supreme Court has found numerous other situations where the single subject rule was violated. *See e.g., In re the Title, Ballot Title, and Submission Clause for 2007-2008 #17, supra* (initiative sought to create an environmental conservation mission; however, a plain reading of the language also revealed the inclusion of a public trust standard for agency decision-making); *In re Title, Ballot Title and Submission Clause 1999-2000 #258(A)*, 4 P.3d 1094 (Colo. 2000) (elimination of school board's power to require bilingual education was not a separate subject so as to violate single-subject requirement); *In re Proposed Initiative for 1997-1998 #30*, 959 P.2d 822, 823 (Colo. 1998) (court disapproved of an initiative burying unrelated revenue and spending increases within tax cut language).

Therefore, the court must examine sufficiently the central theme as expressed in order to determine whether it contains incongruous or hidden purposes or bundles incongruous measures under a broad theme. *See In the Matter of the Title and Ballot Title and Submission Clause for 2005–2006 #55, supra.* Here, the Initiative's complexity and omnibus proportions are hidden from the voter. Initiative also contains multiple provisions:

(a) True purpose behind this initiative is to supersede and repeal at-will employment relationships in Colorado that applies to employer-employee relationships. The

doctrine of employment at will has deep roots in American law dating back at least to the nineteenth century. Employment at-will is an employment relationship that allows either the employer or employee to terminate employment for any cause or no cause, except for an illegal reason. The initiative replaces traditional employment laws by providing that employees may only be terminated for just cause. The purpose of the Initiative is hidden from signers of the petition and voters.

(b) The Initiative supersedes and impliedly repeals the State's civil service system. The Initiative's substantive, procedural, and administrative provisions apply not just to private employers, but government employees as well. Hence, the Initiative would eliminate the civil service system. By way of example only, certified state employees enjoy a constitutional property right in his or her employment and, therefore, are entitled to due process and a mandatory hearing before an Administrative Law Judge when that right is infringed. Colo. Const. Art. 12, Section 13; Colo. Rev. Stat. Section 24-50-125(3). A mandatory right to an evidentiary hearing exists when the agency takes disciplinary action against the employee that adversely affects the employee's current base pay, status or tenure. Due process includes the right to appeal an agency's decision through the court system.

(d) Eliminates employers' right to contract. The United States Constitution Article I, § 10 provides that contractual rights shall not be impaired. Nothing in the Initiative provides that it shall not apply to any contract of employment or written collective bargaining agreement.

(e) This Initiative proposes an unconstitutional impediment to ones access to court. This is hidden in the initiative. This is a separate and distinct issue from requiring just cause for employment termination. "Courts of justice shall be open to every person, and a

speedy remedy afforded for every injury to person, property or character, and the rights and justice should be administered without... denial or delay." Colo. Const. Art. 12, § 13; Colo. Rev. Stat. § 24-50-125(3) (State Personnel Disciplinary proceedings--appeals--hearings—procedure).

(f) Eliminates due process rights. The new statute provides no ability to appeal an adverse ruling by either private employers and individuals or governmental employees. Instead, the Mediator's decision is final. "No person shall be deprived of life, liberty or property without due process of law." Colo. Const. Art. II, § 25. "The essence of due process is a fair procedure," no particular procedure, so long as elements of opportunity for hearing and judicial review are present. *See Norton v. Colo. State Bd. of Med. Examiners,* 821 P.2d 897, 901 (Colo. 1991) (quoting *deKoevend v. Board of Education,* 688 P.2d 219 (Colo.1984)).

The Initiative would bring about a fundamental change in our system of government by denying fundamental rights that are basic to everyone. Voters ought to be able to consider these fundamental changes separately as they go to the core of our judicial system. Courts have acknowledged the difference between an initiative's seemingly procedural changes that affect fundamental rights. *See e.g., In re the Matter and Ballot Title and Submission Clause, 2005-2006 supra; In re the Matter of the Title, Ballot Title and Submission Clause for 2003-2004, #32 & #33,* 76 P.3d 460 (Colo. 2003).

2. The text of the Initiative is inherently unclear, inaccurate, incomplete, confusing and misleading as to its reach and purpose, such that the Board is precluded from setting a ballot title. *See In re Proposed Initiative 1999-2000 #37,* 977 P.2d 845, 846 (Colo. 1999) (holding that titles and summary may not be presented to voters because contained more than one subject and confusing). The Board's chosen language for the titles and summary must be fair, clear, and

accurate, and the language must not mislead the voters. *In re Ballot Title 1999-2000 #258(A)*, 4 P.3d 1094, 1098 (Colo. 2000). "In fixing titles and summary, the Board's duty is 'to capture, in short form, the proposal in plain, understandable, accurate language enabling informed voter choice." *Id.* (quoting *In re Proposed Initiative for 1999-2000 No. 29*, 972 P.2d 257, 266 (Colo. 1999)). *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104*, 987 P.2d 249 (Colo. 1999) (initiative's "not to exceed" language, repeated without explanation or analysis in summary, created unconstitutional confusion and ambiguity).

This requirement helps to ensure that voters are not surprised after an election to find that an initiative included a surreptitious, but significant, provision that was obfuscated by other elements of the proposal. *In the Matter of the Title, Ballot Title and Submission Clause for Proposed Initiative 2001-02 #43*, 46 P.3d 438, 442 (Colo. 2002). Eliminating a key feature of the initiative from the titles is a fatal defect if that omission may cause confusion and mislead voters about what the initiative actually proposes. *Id.*; *see also, In re Ballot Title 1997-1998 #62*, 961 P.2d at 1082. The Board is not precluded from adopting language which explains to the signers of a petition and the voter how the initiative fits in the context of existing law, even though the specific language is not found in the text of the proposed initiative. *In re Title Pertaining to Sale of Table Wine in Grocery Stores*, 646 P.2d 916 (Colo. 1982).

In *258(A)* the titles were materially defective for failure to include a key feature of the initiative that resulted in misleading and confusing the voters. The title board failed to articulate in the titles that school districts and schools cannot be required to offer bilingual programs. Voters could assume that parents of non-English speaking students will have a meaningful choice between an English immersion program and a bilingual program and thus favor the proposal as assuring both programs.

In re Matter of Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002 #21 and 22, 44 P.3d 213 (Colo. 2002), the court held that initiatives were misleading because they did not express creation of a new constitutional duty on the part of the state to provide all children with an education to become productive members of society, fairly express goal of eliminating bilingual education, did not reference parental waiver process, and intent to remove English language instruction from local to state control.

3. The Initiative is misleading, incomplete, confusing and inaccurate for the following reasons:

(a) Fails to express the initiative's purpose and effect of superseding and impliedly repealing the at-will employment relationship.

(b) Fails to express that the employment at-will relationship is being replaced with a new legal standard for terminating and suspending employees.

(c) Fails to express that the initiative would replace and eliminate the civil service system.

(d) Fails to express that it applies to all employment relationships in the State of Colorado, not just private employment relationships.

(e) Fails to clearly express that employers may be liable for damages despite having a legitimate reason for suspension or termination of employment.

(f) Fails to express that it eliminates fundamental rights to ones access to the court and that due process rights are also eliminated by the Initiative.

(g) The Initiative fails to express the fact that it eliminates the rights of employees to enter into a written collective bargaining agreement or a contract of employment. The Fourteenth Amendment to the United States Constitution prohibits the states from entering

laws which impair obligations of contract. *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 97 S.Ct. 1505, 52 L.Ed.2d 92 (1977). In determining whether the law violates the contracts clause, a multi-step analysis is followed. First, the court must determine if the law has the effect on impairing contracts. If so, the court must determine if it is impairing a state's own obligation or impairing a private contract. A state may enact a law which impairs its own existing contracts only if it is a reasonable and necessary to serve an important public purpose. *See id.*

(h) Use of the term "mediation" is a misnomer and will mislead voters into think the process in non-binding, when it is in fact binding arbitration.

(i) Fails to express that the mediator's decision is final.

The Initiative also improperly uses catch phrases such as "mediation" and "just cause". "It is well established that the use of catch phrase or slogans in the title, ballot title and submission clause, and summary should be carefully avoided by the Board." *In re Ballot Title 1999-20000 #258(A), supra,* 4 P.3d at 1100; *see also, In re Amend Tabor No. 32*, 908 P.2d 125, 130 (Colo. 1995). This rule recognizes that the particular words chosen by the Title Board should not prejudice electors to vote for or against the proposed initiative merely by virtue of those words' appeal to emotion. *Id.; see also, In Re Ballot Title 1999-2000 # 215,* 3 P.3d 11, 14 (Colo. 2000). Catch phrases are words that work to a proposal's favor without contributing to voter understanding. By drawing attention to themselves and triggering a favorable response, catch phrases generate support for a proposal that hinges not on the content of the proposal itself, but merely on the wording of each phrase. 4 P.3d at 1100.

Catch phrases may also form the basis of a slogan for use by those who expect to carry out a campaign for or against an initiated constitutional amendment, thus further prejudicing voter understanding of the issues actually presented. Slogans are catch phrases tailored for

political campaigns-brief striking phrases for use in advertising or promotion. They encourage prejudice in favor of the issue and, thereby, distract voters from consideration of the proposals merits. *Id.* (*i.e.*, be taught English "as rapidly and effectively as possible"). They mask the policy question.

4. Proponents substantively amended the title without submitting it to the directors of the Legislative Council and Office of Legislative Legal Services.

The proponents submitted an amended title to the title board at the February 20, 2008 Title Board Hearing without having first submitted it to the directors of the Legislative Council and Office of Legislative Legal Services. Because the proponents made substantive changes to the title, these bodies must be given a new opportunity to review the title. "The requirement that the original draft be submitted to the legislative council and office of legislative legal services permits the proponents to benefit from the experience of experts in constitutional and legislative drafting, and allows the public to understand the implications of a proposed initiative at an early stage in the process." *In re Title, Ballot Title and Submission Clause, and Summary for 1999-00 #256*, 12 P.3d 246 (Colo. 2000) (citing *See In re Proposed Initiated Constitutional Amend. Concerning Limited Gaming in the Town of Idaho Springs*, 830 P.2d 963, 966 (Colo. 1992)).

The original text that the proponents submitted to the directors defined "just cause" to include:

> (2) For purposes of this section, "just cause" means:
> (A) Incompetence;
> (B) Substandard Performance of assigned job duties;
> (C) Neglect of assigned job duties;
> (D) Repeated violations of the employer's written policies and procedures relating to job performance;
> (E) Gross insubordination that affects job performance;
> (F) Willful misconduct that affects job performance; or,
> (G) Conviction of a crime involving moral turpitude.

In the initiative submitted to the Title Board, this provision was augmented to include new provisions:

(H) Filing of bankruptcy by the employer; or,
(I) Simultaneous discharge or suspension of ten percent or more of the employer's workforce in Colorado.

The directors of the Legislative Council and Office of Legislative Legal Services had not seen or commented on these new subsections within the definition of the central term in the initiative. Nonetheless, this became the final text for the Title. The original six involve the actions of the employee. The new additions concern employer actions or events. Because (H) and (I) add new opportunities for "just cause" to occur, the changes are substantive. Because (H) and (I) were added after the note and comment hearing, the proponents must be required to resubmit their initiative for further review.

Had the Legislative Council and Office of Legislative Legal Services directed the proponents to make this material change in the draft, it might have been proper. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-00 #256, supra*, 12 P.3d at 251. The directors did not give such an instruction, however. Therefore, it was error on the part of the Title Board to set the title for this initiative. The proponents should be required to resubmit their initiative for the review of staff.

Please set a rehearing in this matter for the next Title Board Meeting.

Respectfully submitted this 27th day of February, 2008.

FAIRFIELD AND WOODS, P.C.

By: *Original signature of Douglas J. Friednash on file*
Douglas J. Friednash, #18128
John M. Tanner, # 16233
Susan F. Fisher, #33174

Petitioners Address:

1445 Market Street
Denver, CO 80202

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of February 2008, a true and correct copy of the foregoing **MOTION FOR REHEARING** was Hand Delivered and sent U.S. Mail as follows to:

Mark G. Grueskin
Isaacson Rosenbaum P.C.
633 Seventeenth St., Suite 2200
Denver, CO 80202

s/ Monica Houston
Monica Houston

Ballot Title Setting Board

Proposed Initiative 2007-2008 #62[1]

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

An amendment to the Colorado constitution concerning just cause for action against an employee by an employer, and, in connection therewith, prohibiting the discharge or suspension of an employee by an employer unless the employer has first established just cause; defining "just cause" to mean specified types of employee misconduct and substandard job performance, the filing of bankruptcy by the employer, or the simultaneous discharge or suspension of ten percent or more of the employer's workforce in Colorado; requiring an employer to provide to an employee written documentation of the basis for his discharge or suspension; allowing an employee who believes he was discharged or suspended without just cause to apply for mediation to seek an award of back wages and reinstatement; allowing the mediator to assess costs for his services to the losing party and award attorneys fees to the prevailing party; and authorizing the general assembly to enact legislation to facilitate the purposes of this amendment.

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 just cause for action against an employee by an employer, and, in connection therewith, prohibiting the discharge or suspension of an employee by an employer unless the employer has first established just cause; defining "just cause" to mean specified types of employee misconduct and substandard job performance, the filing of bankruptcy by the employer, or the simultaneous discharge or suspension of ten percent or more of the employer's workforce in Colorado; requiring an employer to provide to an employee written documentation of the basis for his discharge or suspension; allowing an employee who believes he was discharged or suspended without just cause to apply for mediation to seek an award of back wages and reinstatement; allowing the mediator to assess costs for his services to the losing party and award attorneys fees to the prevailing party; and authorizing the general assembly to enact legislation to facilitate the purposes of this amendment?

Hearing February 20, 2008:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 11:44 a.m.

Hearing March 5, 2008:
Motion for Rehearing denied.
Hearing adjourned 12:37 p.m.

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[1] Unofficially captioned **"Cause for Employee Suspension and Discharge"** by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

Submitted by Mark Grueskin 3/5/08

STATE OF COLORADO

Colorado General Assembly

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Legislative Council Staff

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MEMORANDUM

January 24, 2008

TO: Robin Wright, Cynthia Knox, and Sara Kuntzler

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #62, concerning just cause employee suspension and discharge

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment appear to be:

1. To prohibit an employer from discharging or suspending an employee unless the employer has first established just cause for the discharge or suspension;

2. To define "just cause" to mean:

a. Incompetence;
b. Substandard performance of assigned job duties;
c. Neglect of assigned job duties;
d. Repeated violations of the employer's written policies and procedures relating to job performance;
e. Gross insubordination that affects job performance;
f. Willful misconduct that affects job performance; or
g. Conviction of a crime involving moral turpitude.

3. To specify that any employee who is notified that he will be or has been discharged or suspended shall receive the employer's written documentation of the just cause used to justify such discharge or suspension;

4. To allow an employee who believes he was discharged or suspended without just cause to, within thirty days after notification of the discharge or suspension, apply for mediation of a claim for wrongful discharge or suspension;

5. To state that a hearing shall be held before a private mediator within one hundred twenty days after an employee files for mediation;

6. To permit the employee and the employer to present evidence and make legal argument at the hearing;

7. To allow a mediator who finds that an employee was discharged or suspended without just cause to award the employee all back wages or reinstatement in his former job or both;

8. To require the mediator to assess the costs for his or her services to the losing party;

9. To allow the mediator to award attorney fees to the prevailing party as to any claim made by the employee;

10. To allow the general assembly to enact legislation to facilitate the purposes of the proposed amendment;

11. To make the proposed amendment effective upon proclamation of the governor regarding the votes cast on the amendment.

Comments and Questions

The form and substance of the proposed initiative raise the following comments and questions:

Technical questions:

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by initiative:

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

Would the proponents consider adding such an enacting clause at the beginning of the proposed measure?

2. In Colorado, when a proposed measure adds new language to the Colorado Revised Statutes or the Colorado constitution, certain drafting conventions are used.

a. To provide notice to the public of the proposed changes to the law and to identify where a new provision is to be placed, an initiative, similar to a bill or referendum, generally refers to the specific statutory or constitutional article, part, or section that is to be amended or added. Proposed measures to add new language use an "amending clause" indicating the specific section of the law where new language will be added. The amending clause would be placed following the enacting clause referred to in the above question 1. Would the proponents consider adding an amending clause to the proposed measure, indicating where the new language is to placed? (See paragraph b. below for examples of amending clauses.)

b. Each section of the statutes and the constitution begins with a section heading that includes the section number and a short description of the section contents. If the proponents decide to specify a constitutional or statutory section that is to be created, as discussed in the above paragraph a., would the proponents consider adding a section heading? For example:

SECTION 1. Part 1 of article 2 of title 8, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

8-2-124. Just cause for discharge or suspension - mediation. (1) NO EMPLOYEE MAY BE DISCHARGED OR SUSPENDED UNLESS THE EMPLOYER . . .

OR

SECTION 1. The constitution of the state of Colorado is amended BY THE ADDITION OF A NEW ARTICLE to read:

Section 1. Just cause for discharge or suspension - mediation. (1) NO EMPLOYEE MAY BE DISCHARGED OR SUSPENDED UNLESS THE EMPLOYER . . .

c. Also, if it is the proponents' intent to add a new article or part to the constitution or the statutes, an initiative, similar to a bill or referendum, generally contains an article

or part heading that refers to the subject matter of the new article or part. The heading would be placed following the amending clause referred to in paragraph a. above. If the proponents intend to add a new part or article to the statutes or the constitution, would the proponents consider adding an article or part heading to the proposed measure? (A heading is not necessary if the proponents intend to add just a section.) For example:

ARTICLE XXX

Just Cause for Employee Discharge or Suspension

(or)

PART 5

JUST CAUSE FOR EMPLOYEE DISCHARGE OR SUSPENSION

3. To be consistent with standard drafting practices, would the proponents consider:

   a. Changing the paragraph letters in subsection (2) and (4) of the proposed measure to be lower case, not small capped? For example, "(A)" should be "(a)", "(B)" should be "(b)", etc.
   b. In subsection (2), capitalizing the first letter of the first word following each of the paragraph letters (a) to (g)? For example, "INCOMPETENCE" should be "INCOMPETENCE".
   c. In paragraph (g) of subsection (2), changing the comma following the word "TURPITUDE" to a period?
   d. Making the language of the proposed measure gender-neutral? For example, in subsection (3) and paragraph (a) of subsection (4), add "OR SHE" after the word "HE" and in paragraph (b) of subsection (4), add "OR HER" after the word "HIS".

4. In paragraph (a) of subsection (4) (in line 24), there seems to be a word missing. Would the proponents consider adding the word "THE" after the word "AT"?

5. In paragraph (d) of subsection (4), would the proponents consider changing "ATTORNEYS FEES" to "ATTORNEY FEES" for the correct term?

Substantive questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?

2. Subsection (3) states that the employee shall receive written documentation of the just cause for discharge or suspension. Do the proponents want to state directly that the employer shall

provide the written documentation to the employee?

3. Subsection (4) (a) refers to application for mediation. Do the proponents wish to specify how the mediator is selected?

4. Do the proponents wish to include a process to appeal the mediator's decision or is the mediator's decision a final action?

5. There appears to be no allowance for layoffs due to a lack of work or even the bankruptcy of the employer. Is this the proponents' intent? If so:

   a. Where should the employee stand vis-à-vis other creditors of the employer?

   b. If the employer is a corporation and has no available assets, would the employee be able to hold individualized officers of the corporate employer personally liable? Do the proponents wish to clarify whether this would be the case and, if so, what procedure should be followed to accomplish it?

Amended Text
2007-2008
#62

~~*JUST CAUSE*~~

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

SECTION 1. Article XVIII of the Colorado Constitution is amended BY THE ADDITION OF A NEW SECTION 13 to read:

SECTION 13. JUST CAUSE FOR EMPLOYEE DISCHARGE OR SUSPENSION.

(1) NO EMPLOYEE MAY BE DISCHARGED OR SUSPENDED UNLESS THE EMPLOYER HAS FIRST ESTABLISHED JUST CAUSE FOR THE DISCHARGE OR SUSPENSION.

(2) FOR PURPOSES OF THIS SECTION, "JUST CAUSE" MEANS:

(A) INCOMPETENCE;

(B) SUBSTANDARD PERFORMANCE OF ASSIGNED JOB DUTIES;

(C) NEGLECT OF ASSIGNED JOB DUTIES;

(D) REPEATED VIOLATIONS OF THE EMPLOYER'S WRITTEN POLICIES AND PROCEDURES RELATING TO JOB PERFORMANCE;

(E) GROSS INSUBORDINATION THAT AFFECTS JOB PERFORMANCE;

(F) WILLFUL MISCONDUCT THAT AFFECTS JOB PERFORMANCE; ~~OR~~

(G) CONVICTION OF A CRIME INVOLVING MORAL TURPITUDE~~.~~;

(H) FILING OF BANKRUPTCY BY THE EMPLOYER; OR

(I) SIMULTANEOUS DISCHARGE OR SUSPENSION OF TEN PERCENT OR MORE OF THE EMPLOYER'S WORKFORCE IN COLORADO.

(3) AN EMPLOYER SHALL PROVIDE TO ANY ~~ANY~~ EMPLOYEE WHO ~~IS NOTIFIED THAT HE WILL BE OR~~ HAS BEEN DISCHARGED OR SUSPENDED ~~SHALL, AT THAT TIME, RECEIVE~~ THE EMPLOYER'S WRITTEN DOCUMENTATION OF THE JUST CAUSE USED TO JUSTIFY SUCH DISCHARGE OR SUSPENSION.

(4) (A) ANY EMPLOYEE WHO BELIEVES HE WAS DISCHARGED OR SUSPENDED WITHOUT JUST CAUSE MAY, WITHIN THIRTY DAYS AFTER NOTIFICATION OF THE DISCHARGE OR SUSPENSION, APPLY FOR MEDIATION OF A CLAIM FOR WRONGFUL DISCHARGE OR SUSPENSION. WITHIN ONE HUNDRED TWENTY DAYS AFTER AN EMPLOYEE FILES FOR MEDIATION, A HEARING SHALL BE HELD BEFORE A PRIVATE MEDIATOR. AT HEARING, THE EMPLOYEE AND THE EMPLOYER SHALL BE PERMITTED TO PRESENT EVIDENCE AND MAKE LEGAL ARGUMENT.

(B) A MEDIATOR WHO FINDS THAT AN EMPLOYEE WAS DISCHARGED OR SUSPENDED WITHOUT JUST CAUSE MAY AWARD THE EMPLOYEE ALL BACK WAGES OR REINSTATEMENT IN HIS FORMER JOB OR BOTH.

(C) THE MEDIATOR SHALL ASSESS THE COSTS FOR HIS OR HER SERVICES TO THE LOSING PARTY.

(D) THE MEDIATOR MAY AWARD ATTORNEYS FEES TO THE PREVAILING PARTY AS TO ANY CLAIM MADE BY THE EMPLOYEE.

(E) IN ALL MATTERS DECIDED PURSUANT TO THIS SECTION 13(4), THE DECISION OF THE MEDIATOR SHALL BE FINAL.

(5) THE GENERAL ASSEMBLY MAY ENACT LEGISLATION TO FACILITATE THE PURPOSES OF THIS SECTION, INCLUDING BUT NOT LIMITED TO LEGISLATION ADDRESSING APPLICATIONS FOR MEDIATION AND THE SELECTION OF MEDIATORS BY THE PARTIES.

(6) THIS SECTION SHALL BECOME EFFECTIVE UPON PROCLAMATION OF THE GOVERNOR REGARDING THE VOTES CAST ON THIS AMENDMENT.

Original Text
2007-2008
#62

JUST CAUSE

(1) NO EMPLOYEE MAY BE DISCHARGED OR SUSPENDED UNLESS THE EMPLOYER HAS FIRST ESTABLISHED JUST CAUSE FOR THE DISCHARGE OR SUSPENSION.

(2) FOR PURPOSES OF THIS SECTION, "JUST CAUSE" MEANS:

(A) INCOMPETENCE;

(B) SUBSTANDARD PERFORMANCE OF ASSIGNED JOB DUTIES;

(C) NEGLECT OF ASSIGNED JOB DUTIES;

(D) REPEATED VIOLATIONS OF THE EMPLOYER'S WRITTEN POLICIES AND PROCEDURES RELATING TO JOB PERFORMANCE;

(E) GROSS INSUBORDINATION THAT AFFECTS JOB PERFORMANCE;

(F) WILLFUL MISCONDUCT THAT AFFECTS JOB PERFORMANCE; OR

(G) CONVICTION OF A CRIME INVOLVING MORAL TURPITUDE,

(3) ANY EMPLOYEE WHO IS NOTIFIED THAT HE WILL BE OR HAS BEEN DISCHARGED OR SUSPENDED SHALL, AT THAT TIME, RECEIVE THE EMPLOYER'S WRITTEN DOCUMENTATION OF THE JUST CAUSE USED TO JUSTIFY SUCH DISCHARGE OR SUSPENSION.

(4) (A) ANY EMPLOYEE WHO BELIEVES HE WAS DISCHARGED OR SUSPENDED WITHOUT JUST CAUSE MAY, WITHIN THIRTY DAYS AFTER NOTIFICATION OF THE DISCHARGE OR SUSPENSION, APPLY FOR MEDIATION OF A CLAIM FOR WRONGFUL DISCHARGE OR SUSPENSION. WITHIN ONE HUNDRED TWENTY DAYS AFTER AN EMPLOYEE FILES FOR MEDIATION, A HEARING SHALL BE HELD BEFORE A PRIVATE MEDIATOR. AT HEARING, THE EMPLOYEE AND THE EMPLOYER SHALL BE PERMITTED TO PRESENT EVIDENCE AND MAKE LEGAL ARGUMENT.

(B) A MEDIATOR WHO FINDS THAT AN EMPLOYEE WAS DISCHARGED OR SUSPENDED WITHOUT JUST CAUSE MAY AWARD THE EMPLOYEE ALL BACK WAGES OR REINSTATEMENT IN HIS FORMER JOB OR BOTH.

(C) THE MEDIATOR SHALL ASSESS THE COSTS FOR HIS OR HER SERVICES TO THE LOSING PARTY.

(D) THE MEDIATOR MAY AWARD ATTORNEYS FEES TO THE PREVAILING PARTY AS TO ANY CLAIM MADE BY THE EMPLOYEE.

(5) THE GENERAL ASSEMBLY MAY ENACT LEGISLATION TO FACILITATE THE PURPOSES OF THIS SECTION.

(6) THIS SECTION SHALL BECOME EFFECTIVE UPON PROCLAMATION OF THE GOVERNOR REGARDING THE VOTES CAST ON THIS AMENDMENT.

Colorado
Legislative
Council
Staff

Room 029 State Capitol, Denver, CO 80203-1784
(303) 866-3521 FAX: 866-3855 TDD: 866-3472

NOTICE
PUBLIC INITIATIVE HEARING
Tuesday, January 29, 2008

The Colorado Constitution authorizes the registered electors of Colorado to propose changes in the state Constitution and the laws by petition. The original draft of the text of proposed initiated constitutional amendments and laws must be submitted to the General Assembly's legislative research and legal services offices for review and comment. Pursuant to the requirements of Article V, Section 1 (5), Colorado Constitution, the offices must submit comments to proponents at a meeting open to the public.

The directors of the Legislative Council Staff and the Office of Legislative Legal Services will hold a meeting with the proponents of the attached initiative proposal, unless the proposal is withdrawn by the proponents prior to the meeting.

Proposal Number: **2007-2008 #62**

Time and Date of Meeting: 01:30 PM, Tuesday, January 29, 2008

Place of Meeting: HCR 0109, State Capitol

Topic of Proposal: Cause for Employee Suspension and Discharge

JUST CAUSE

(1) NO EMPLOYEE MAY BE DISCHARGED OR SUSPENDED UNLESS THE EMPLOYER HAS FIRST ESTABLISHED JUST CAUSE FOR THE DISCHARGE OR SUSPENSION.

(2) FOR PURPOSES OF THIS SECTION, "JUST CAUSE" MEANS:

(A) INCOMPETENCE;

(B) SUBSTANDARD PERFORMANCE OF ASSIGNED JOB DUTIES;

(C) NEGLECT OF ASSIGNED JOB DUTIES;

(D) REPEATED VIOLATIONS OF THE EMPLOYER'S WRITTEN POLICIES AND PROCEDURES RELATING TO JOB PERFORMANCE;

(E) GROSS INSUBORDINATION THAT AFFECTS JOB PERFORMANCE;

(F) WILLFUL MISCONDUCT THAT AFFECTS JOB PERFORMANCE; OR

(G) CONVICTION OF A CRIME INVOLVING MORAL TURPITUDE,

(3) ANY EMPLOYEE WHO IS NOTIFIED THAT HE WILL BE OR HAS BEEN DISCHARGED OR SUSPENDED SHALL, AT THAT TIME, RECEIVE THE EMPLOYER'S WRITTEN DOCUMENTATION OF THE JUST CAUSE USED TO JUSTIFY SUCH DISCHARGE OR SUSPENSION.

(4) (A) ANY EMPLOYEE WHO BELIEVES HE WAS DISCHARGED OR SUSPENDED WITHOUT JUST CAUSE MAY, WITHIN THIRTY DAYS AFTER NOTIFICATION OF THE DISCHARGE OR SUSPENSION, APPLY FOR MEDIATION OF A CLAIM FOR WRONGFUL DISCHARGE OR SUSPENSION. WITHIN ONE HUNDRED TWENTY DAYS AFTER AN EMPLOYEE FILES FOR MEDIATION, A HEARING SHALL BE HELD BEFORE A PRIVATE MEDIATOR. AT HEARING, THE EMPLOYEE AND THE EMPLOYER SHALL BE PERMITTED TO PRESENT EVIDENCE AND MAKE LEGAL ARGUMENT.

(B) A MEDIATOR WHO FINDS THAT AN EMPLOYEE WAS DISCHARGED OR SUSPENDED WITHOUT JUST CAUSE MAY AWARD THE EMPLOYEE ALL BACK WAGES OR REINSTATEMENT IN HIS FORMER JOB OR BOTH.

(C) THE MEDIATOR SHALL ASSESS THE COSTS FOR HIS OR HER SERVICES TO THE LOSING PARTY.

(D) THE MEDIATOR MAY AWARD ATTORNEYS FEES TO THE PREVAILING PARTY AS TO ANY CLAIM MADE BY THE EMPLOYEE.

(5) THE GENERAL ASSEMBLY MAY ENACT LEGISLATION TO FACILITATE THE PURPOSES OF THIS SECTION.

(6) THIS SECTION SHALL BECOME EFFECTIVE UPON PROCLAMATION OF THE GOVERNOR REGARDING THE VOTES CAST ON THIS AMENDMENT.

chattr@aol.com
01/15/2008 09:09 AM

To Lcs.ga@state.co.us
cc
bcc
Subject Just Cause Ballot Initiative filing

To: Kirk Mlinek, Director
Colorado Legislative Council Staff

From: Robin D. Wright
Cindy Knox

We are the proponents filing the "Just Cause" initiative. We have included our contact information below. Please let us know if you need any additional information. Thanks.

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 - JUST CAUSE - Grueskin.doc