SUPREME COURT OF COLORADO 2 East 14th Avenue 4th Floor Denver, Colorado 80203	FILED IN THE SUPREME COURT APR 09 2008 OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK
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, #76 **Petitioner:** JOSEPH B. BLAKE, Objector, v. **Respondents:** JOANNE KING AND LARRY ELLINGSON, Proponents, and **Title Board:** WILLIAM A. HOBBS, DANIEL L. CARTIN, and DANIEL DOMENICO.	▲ **COURT USE ONLY** ▲
Attorneys for Petitioner: Douglas J. Friednash, #18128 John M. Tanner #16233 Susan F. Fisher, #33174 Fairfield and Woods, P.C. 1700 Lincoln Street, Suite 2400 Denver, Colorado 80203 Phone: (303) 830-2400 Facsimile: (303) 830-1033	Case No. 08SA120

PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2007-2008 #76 ("JUST CAUSE FOR EMPLOYEE DISCHARGE OR SUSPENSION")

Petitioner Joseph B. Blake (hereinafter "Petitioner"), a registered elector of the State of Colorado, through his counsel, Fairfield and Woods, P.C., respectfully petitions this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Ballot Title Setting Board ("Title Board") with respect to the setting of the title, ballot title, and submission clause for Proposed Initiative 2007-2008 #76 ("Just Cause for Employee Discharge or Suspension").

I. Actions of the Ballot Title Setting Board

The Title Board conducted its initial public meeting and set title for Proposed Initiative 2007-2008 #76 on March 19, 2008. Petitioner field a Motion for Rehearing, pursuant to C.R.S. § 1-40-107(2), on March 26, 2008. The Motion for Rehearing was heard at the next meeting of the Title Board on April 2, 2008. At the rehearing, the Title Board denied Petitioner's Motion for Rehearing. Petitioner hereby seeks a review of the final action of the Title Board with regard to Proposed Initiative 2001-2008 #76 ("Just Cause for Employee Discharge or Suspension").

II. Issues Presented

1. Whether the proposed initiative violates the single subject requirement of Colo. Const. art. V, § 1(5.5) and Colo. Rev. Stat. § 1-40-106.5, and amends or repeals unrelated provisions of the constitution.

2. Whether the initiative's title, ballot title, and submission clause are misleading, confusing, insufficient, unclear, and fail to reflect the initiative's true meaning and intent.

III. Supporting Documentation

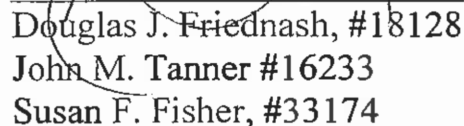
As required by C.R.S. § 1-40-107(2), a certified copy of the Petition, with the titles and submission clause of the proposed initiative, together with a certified copy of the Motion for Rehearing and the rulings thereon, are submitted with this Petition.

IV. Relief Requested

Petitioner respectfully requests this Court to reverse the actions of the Title Board with directions to decline to set a title and return the Proposed Initiative 2007-2008 #76 ("Just Cause for Employee Discharge or Suspension") to the proponents.

Respectfully submitted this 9th day of April, 2008.

FAIRFIELD AND WOODS, P.C.

By: 

Douglas J. Friednash, #18128
John M. Tanner #16233
Susan F. Fisher, #33174

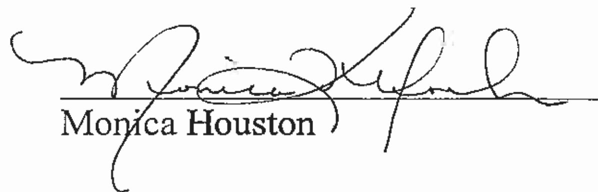
Petitioner's Address:
1445 Market Street
Denver, CO 80202

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of April, 2008, a true and correct coy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2007-2008 #76 ("JUST CAUSE FOR EMPLOYEE DISCHARGE OR SUSPENSION")** was placed in the United States mail, postage prepaid, to the following:

Mark G. Grueskin, Esq.
Isaacson Rosenbaum P.C.
633 17th Street, Suite 2200
Denver, CO 80202

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



Monica Houston

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 #76"...........................

..............**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 7th day of April, 2008.

Mike Coffman

SECRETARY OF STATE

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MAR 07 2008 (h, 2:38 p.m.
ELECTIONS
SECRETARY OF STATE

Proposed Initiative 2007-2008 #76

FINAL

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 13. Just cause for employee discharge or suspension. (1) AN EMPLOYEE MAY BE DISCHARGED OR SUSPENDED ONLY IF HIS OR HER EMPLOYER HAS FIRST ESTABLISHED JUST CAUSE FOR THE DISCHARGE OR SUSPENSION.

(2) FOR PURPOSES OF THIS SECTION:

(a) "JUST CAUSE" MEANS:

(I) INCOMPETENCE;
(II) SUBSTANDARD PERFORMANCE OF ASSIGNED JOB DUTIES;
(III) NEGLECT OF ASSIGNED JOB DUTIES;
(IV) REPEATED VIOLATIONS OF THE EMPLOYER'S WRITTEN POLICIES AND PROCEDURES RELATING TO JOB PERFORMANCE;
(V) GROSS INSUBORDINATION THAT AFFECTS JOB PERFORMANCE;
(VI) WILLFUL MISCONDUCT THAT AFFECTS JOB PERFORMANCE;
(VII) CONVICTION OF A CRIME INVOLVING MORAL TURPITUDE;
(VIII) FILING OF BANKRUPTCY BY THE EMPLOYER; OR
(IX) DISCHARGE OR SUSPENSION DUE TO SPECIFIC ECONOMIC CIRCUMSTANCES THAT DIRECTLY AND ADVERSELY AFFECT THE EMPLOYER AND ARE DOCUMENTED BY THE EMPLOYER, PURSUANT TO SUBSECTION (3) OF THIS SECTION.

(b) "EMPLOYEE" MEANS ANY NATURAL PERSON WHO:

(I) HAS WORKED AS A FULL-TIME EMPLOYEE FOR AT LEAST SIX CONSECUTIVE MONTHS FOR A PRIVATE SECTOR EMPLOYER; AND
(II) IS NOT COVERED BY A BONA FIDE COLLECTIVE BARGAINING AGREEMENT WHICH CONTAINS A PROVISION THAT REQUIRES JUST CAUSE FOR DISCHARGE AND SUSPENSION FROM EMPLOYMENT.

(c) "EMPLOYER" MEANS ANY BUSINESS ENTITY THAT EMPLOYS AT LEAST TWENTY FULL-TIME EMPLOYEES IN COLORADO. "EMPLOYER" EXCLUDES:

(I) ANY GOVERNMENTAL ENTITY; OR
(II) ANY NONPROFIT UNINCORPORATED ASSOCIATION OR ANY NONPROFIT CORPORATION, INCLUDING ANY CHARITABLE ORGANIZATION OR FOUNDATION EXEMPT FROM FEDERAL TAXATION UNDER SECTION 501(C) OF THE "INTERNAL REVENUE CODE OF 1986", AS AMENDED, THAT EMPLOYS LESS THAN ONE THOUSAND EMPLOYEES.

(d) "GOVERNMENTAL ENTITY" MEANS ANY AGENCY OR DEPARTMENT OF FEDERAL, STATE, OR LOCAL GOVERNMENT, INCLUDING BUT NOT LIMITED TO ANY BOARD, COMMISSION, BUREAU, COMMITTEE, COUNCIL, AUTHORITY, INSTITUTION OF HIGHER EDUCATION, POLITICAL SUBDIVISION, OR OTHER UNIT OF THE EXECUTIVE, LEGISLATIVE, OR JUDICIAL BRANCHES OF THE STATE; ANY CITY, COUNTY, CITY AND COUNTY, TOWN, OR OTHER UNIT OF THE EXECUTIVE, LEGISLATIVE, OR JUDICIAL BRANCHES THEREOF; ANY SPECIAL DISTRICT, SCHOOL DISTRICT, LOCAL IMPROVEMENT DISTRICT, OR SPECIAL TAXING DISTRICT AT THE STATE OR LOCAL LEVELS OF GOVERNMENT; ANY "ENTERPRISE" AS DEFINED IN SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION; OR ANY OTHER KIND OF MUNICIPAL, PUBLIC, OR QUASI-PUBLIC CORPORATION.

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

(4) (a) ANY EMPLOYEE WHO BELIEVES HE OR SHE WAS DISCHARGED OR SUSPENDED WITHOUT JUST CAUSE MAY, WITHIN ONE HUNDRED EIGHTY DAYS AFTER NOTIFICATION OF THE DISCHARGE OR SUSPENSION, FILE A CIVIL ACTION IN STATE DISTRICT COURT. IF THE DISCHARGE OR SUSPENSION IS HELD TO HAVE BEEN WRONGFUL UNDER THE PROVISIONS OF THIS SECTION, THE COURT SHALL, AT ITS DISCRETION, AWARD THE EMPLOYEE REINSTATEMENT IN HIS OR HER FORMER JOB, BACK WAGES, DAMAGES, OR ANY COMBINATION THEREOF.

(b) IN ADDITION TO ANY AWARD MADE PURSUANT TO THIS SUBSECTION (4), THE COURT MAY ALSO AWARD ATTORNEY FEES TO THE PREVAILING PARTY.

(c) THE DECISION OF THE DISTRICT COURT MAY BE APPEALED TO THE COLORADO COURT OF APPEALS AND THE COLORADO SUPREME COURT AS PERMITTED UNDER THE COLORADO RULES OF CIVIL PROCEDURE.

(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.

ISAACSON
ROSENBAUM P.C.
Law . Client . Community®

Mark G. Grueskin
mgrueskin@ir-law.com

Direct Dial
303.256.3941

RECEIVED
MAR 07 2008 2:38 p.m.
ELECTIONS
SECRETARY OF STATE

March 7, 2008

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

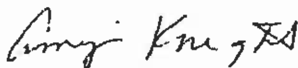
Re: Initiative 2007-08 #76

Dear Ms. Gomez:

Attached please find the required draft of Initiative 2007-08 #76, which our office is filing on behalf of the Proponents for this measure.

Thank you very much.

Sincerely,



Amy Knight
Legal Assistant to Mark G. Grueskin

aak
enclosure
1768878_1.doc

Joanne King
8306 Katherine Way
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Larry Ellingson
8517 Bluegrass Circle
Parker, Colorado 80134
720-530-5592

RECEIVED

MAR 2 6 2008 11:31a.m.

ELECTIONS
SECRETARY OF STATE DJB

COLORADO TITLE SETTING BOARD

In re Proposed Initiative 2007-2008 # 76 (**"Just Cause for Employee Discharge or Suspension"**[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 #76 ("Just Cause for Employee Discharge or Suspension", hereinafter described as the "Initiative") which the Title Board ("Board") heard on March 19, 2008.

1. The title and submission clause is confusing and misleading.

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*

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

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).

Here, the ballot title is unfair, unclear, inaccurate and misleading. The ballot title's first sentence provides in part for "An amendment to the Colorado constitution concerning a requirement that an employer first establish just cause before discharging or suspending an employee. . . ." The first sentence suggests that the "just cause" doctrine is already current law. The language completely ignores the very purpose of the Initiative: to repeal the employment at-will doctrine. The title does not inform the voters that they are taking action on creating a new prohibition. The language fails to express that the employment at-will relationship is being replaced with a prohibition from discharging or suspending employees without just cause as defined by the constitutional amendment. The title as approved does not adequately inform the voter on what he or she is voting. The title should clearly articulate that it creates a new requirement that the covered employer first establish just cause before discharging or suspending a covered employee.

The title misleads voters as to the scope of what employees are covered by this constitutional amendment. While the title does indicate that government employees are not covered, it misleads voters into thinking that most other private employment relationships are

covered by this doctrine. Thus, the title misleads the voter by failing to indicate that labor unions (i.e., bona fide collective bargaining agreements which contain a provision that requires just cause for discharge and suspension from employment) are exempted from the application of this Initiative. The title fails to advise voters that it only applies to full-time employees, too.

The first sentence and the unofficial title reference "just cause". The title also provides a short explanation of just cause and intimates that it applies to various situations. The use of "just cause" is a catch phrase and fails to clearly express that employers may be liable for damages despite having a legitimate reason for suspension or termination of employment. "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. *See In re Ballot Title 1999-2000 #258(A), supra*, 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 proposal's merits. *Id.* (*i.e.*, be taught English "as rapidly and effectively as possible"). They mask the policy question.

In Ballot Title 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 *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.

2. <u>The Initiative violates the single subject rule.</u>

In the aftermath of TABOR, Colorado voters approved a single-subject rule by referendum in 1994. Consequently, TABOR became the last ballot measure to re-work multiple constitutional provisions indirectly and without the clarity that a single subject provides. *See* Colo. Const. art. V, § 1, and Colo. Const. art. XIX, § 2(3).

An initiative violates the single subject requirement when it relates to more than one subject and has at least two distinct and separate purposes which are not dependent upon or

connected with each other. At first glance, the concept of a single subject requirement appears straightforward; however, an initiative with multiple subjects may be improperly offered as a single subject by stating the subject in broad terms. *In the Matter of the Title, Ballot Title and Submission Clause, for 2007-2008 #17*, 172 P.3d 871, 873-74 (Colo. 2007); *In re Title, Ballot Title & Submission Clause & Summary for 1999-2000 #258(A)*, 4 P.3d 1094, 1097 (Colo. 2000). Grouping provisions of a proposed initiative to amend the State Constitution under a broad concept that potentially misleads voters will not satisfy single subject requirement. *See In re Proposed Initiative, 1996-4*, 916 P.2d 528 (Colo. 1996).

"The prohibition against multiple subjects serves to defeat voter surprise by prohibiting proponents from hiding effects in the body of an initiative. *In the Matter of the Title and Ballot Title and Submission Clause for 2005–2006 #55*, 138 P.3d 273, 282 (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).

Therefore, this Court "must examine sufficiently an initiative's central theme to determine whether it contains hidden purposes under a broad theme." *Id.* While this Court cannot address the relative merits of the proposal, it may evaluate the substance of an initiative to determine whether it complies with single subject requirement. *See In re the Matter of Title, Ballot Title and Submission Clause for Proposed Initiative, 1997-98 #30*, 959 P.2d 822, 825 (Colo. 1998).

According to the proponents, the purpose of the Initiative is to repeal the employment at will doctrine. 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 is not governed by an individual contract of employment, collectively bargained agreement, or statute. *See generally*, *Wisehart v. Meganck*, 66 P.3d 124 (Colo. App. 2002). Either party may terminate the employment relationship for any cause or no cause, except for an illegal reason. *See id.* The purpose of the Initiative is hidden from signers of the petition and voters. Indeed, voters will be surprised to learn that the Initiative eliminates the employment at will doctrine in Colorado.

Under the proposed constitutional amendment, no employee can be discharged or suspended unless the employer has first established just cause for the discharge or suspension. An employer must provide an employee who has been discharged or suspended with written documentation of the just cause used to justify the action. 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,
(I) Discharge or suspension due to specific economic circumstances that directly or adversely affect the employer and are documented by the employer.

Any covered employee who believes that he or she was discharged without just cause, may file an action in state district court within 180 days after notification of suspension or termination. The Initiative would bring about sweeping constitutional changes in our system of government and deny fundamental rights that are basic to everyone.

Voters will also be surprised to learn that this measure only applies to full-time employees who have worked for more than six months with a particular business entity. Voters will be surprised to learn that labor unions that have bona fide collective bargaining agreements are exempt from its coverage, as well.

The Initiative eliminates a person's fundamental right to contract. Unlike labor unions and private employers, the Initiative does not allow employers and employees to enter into employment contracts. The United States Constitution Article I, § 10 provides that contractual rights shall not be impaired. Courts have acknowledged the difference between a Proposed Initiative's seemingly procedural changes and its aspects 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).

There, an initiative both implemented procedural changes in the petition system and prohibited lawyers from participating in the process of setting ballot titles. The prohibition on lawyers serving in that role was a substantive change, not a procedural one. "By foreclosing any possibility that an attorney could serve on the title board, these initiatives restrict the political rights of all attorneys. Under our prior decisions, this exclusion from the political process is a substantive matter, not a procedural change to the petitions process." *Id.* at 462 (citing *Evans v. Romer*, 854 P.2d 1270 (Colo. 1993), *cert. denied*, 510 U.S. 959 (1993)). Because it was a substantive change to the rights guaranteed by our Constitution, the court found this admittedly narrow restriction on a fundamental right to be unrelated to tweaking the timelines for petition submission and comparable requirement. *In re Title, Ballot Title and Submission Clause, &*

Summary for 2001-02 #43, 46 P.3d 438, 448 (Colo. 2002) (impairing fundamental right of referendum at local level was a substantive amendment that was unrelated to reform of the petition process).

Initiative 55 sought to prohibit government from providing non-emergency services to persons who were otherwise not lawfully present in the United States. *See In re Proposed Initiative for 2005-2006 # 55*, 138 P.3d 273, 279 (Colo.1995*)*. Initiative 55 did not define "non-emergency" and "services", nor did it categorize the types of services to be restricted, nor 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). There, the complexity and omnibus provisions were hidden from the voter. In failing to describe non-emergency services by defining, categorizing, or identifying subjects or purposes, the Initiative failed to inform voters of the services the passage would affect.

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 a 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 "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*. 172 P.3d 871 (Colo. 2007) (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).

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

Respectfully submitted this 26th day of March, 2008.

FAIRFIELD AND WOODS, P.C.

By: Susan F. Fisher
Douglas J. Friednash, #18128
John M. Tanner, # 16233
Susan F. Fisher, #33174

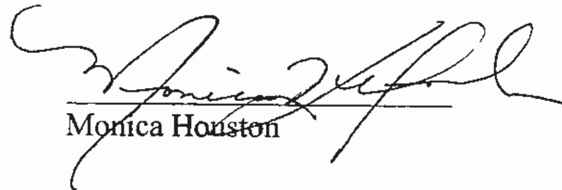
Petitioner's Address:

1445 Market Street.
Denver, CO 80202

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of March 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



Monica Houston

Ballot Title Setting Board

Proposed Initiative 2007-2008 #76[1]

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

An amendment to the Colorado constitution concerning cause for employee discharge or suspension, and, in connection therewith, requiring an employer to establish and document just cause for the discharge or suspension of a full-time employee; defining "just cause" to mean specified types of employee misconduct and substandard job performance, the filing of bankruptcy by the employer, or documented economic circumstances that directly and adversely affect the employer; exempting from the just cause requirement business entities that employ fewer than twenty employees, nonprofit organizations that employ fewer than one thousand employees, governmental entities, and employees who are covered by a collective bargaining agreement that requires just cause for discharge or suspension; allowing an employee who believes he or she was discharged or suspended without just cause to file a civil action in state district court; allowing a court that finds an employee's discharge or suspension to be in violation of this amendment to award reinstatement in the employee's former job, back wages, damages, or any combination thereof; and allowing the court to award attorneys fees to the prevailing party.

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 cause for employee discharge or suspension, and, in connection therewith, requiring an employer to establish and document just cause for the discharge or suspension of a full-time employee; defining "just cause" to mean specified types of employee misconduct and substandard job performance, the filing of bankruptcy by the employer, or documented economic circumstances that directly and adversely affect the employer; exempting from the just cause requirement business entities that employ fewer than twenty employees, nonprofit organizations that employ fewer than one thousand employees, governmental entities, and employees who are covered by a collective bargaining agreement that requires just cause for discharge or suspension; allowing an employee who believes he or she was discharged or suspended without just cause to file a civil action in state district court; allowing a court that finds an employee's discharge or suspension to be in violation of this amendment to award reinstatement in the employee's former job, back wages, damages, or any combination thereof; and allowing the court to award attorneys fees to the prevailing party?

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

Hearing March 19, 2008:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 4:36 p.m.

Hearing April 2, 2008:
Motion for Rehearing granted in part to the extent Board amended titles; denied in all other respects.
Hearing adjourned 3:40 p.m.