

SUPREME COURT OF COLORADO

2 East 14th Avenue 4th Floor
Denver, Colorado 80203

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

IN THE MATTER OF THE TITLE, BALLOT TITLE
AND SUBMISSION CLAUSE FOR 2007-2008, #76

Petitioner:

JOSEPH B. BLAKE,
Objector,

v.

Respondents:

JOANNE KING AND LARRY ELLINGSON,
Proponents,

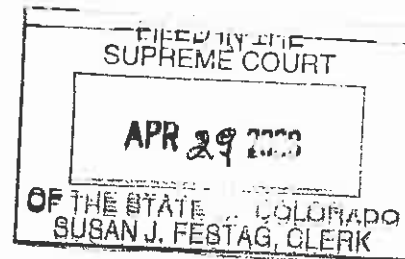
and

Title Board:

WILLIAM A. HOBBS, DANIEL L. CARTIN, and
DANIEL DOMENICO.

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



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Case No. 08SA120

PETITIONER'S OPENING BRIEF

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On behalf of Joseph B. Blake, a registered elector of the State of Colorado, the undersigned hereby files this Opening Brief to appeal the Title Board's approval of the Title for Proposed Initiative 2007–2008 #76 (“Just Cause for Employee Discharge or Suspension”) (hereinafter as the “Initiative”).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

A. Whether the Initiative, violates the single subject requirement of Article V, Section 1 (5.5) of the Colorado Constitution.

B. Whether the Initiative is Misleading, Confusing, Unclear and Inaccurate.

STATEMENT OF THE CASE

On March 19, 2008, the Title Board conducted a public hearing on the Initiative pursuant to Colo. Rev. Stat. §1-40-106(1). There, the Title Board designated and fixed a title, ballot title, and submission clause for the Initiative. Petitioner, a registered elector, timely filed a Motion for Rehearing (the “Motion”) pursuant to Colo. Rev. Stat. §1-40-108(1) on March 26, 2008. On April 2, 2008, the Title Board denied granted in part to the extent the Board amended titles, and denied the Motion in all other respects. Thereafter, Petitioner timely initiated this original proceeding for review of the Title Board's action, pursuant to Colo. Rev. Stat. § 1-40-107(2).

STATEMENT OF THE FACTS

The Initiative's text provides that, "An employee may be discharged or suspended only if his or her employer has first established just cause for the discharge or suspension." Initiative Article XVIII, § 13(1). The Initiative defines "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 related 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; (i) discharge or suspension due to specific economic circumstances that directly and adversely affect the employer, and are documented by the employer. Initiative Article XVIII, § 13(2).

Prior to being discharged or suspended the employer is required to provide written documentation of the just cause used to justify the action. Initiative Article XVIII, § 13(3). Any employee who believes he or she was discharged or suspended without just cause may, within 180 days of the action, file a civil action in State District Court. Initiative Article XVIII, § 13(4). The court may award employee back pay or reinstatement or both.

The Initiative defines employee to mean any natural person who: (1) has worked as a full-time employee for at least six consecutive months for a private sector employer; and, (2) is not covered by a bona fide collective bargaining agreement that contains a provision requiring just cause for discharge and/or suspension from employment. Initiative Article XVIII, Sec. 13(2)(b). The Initiative defines employer as any business entity that employs at least twenty employees and excludes governmental entities and charitable organizations or foundations. Initiative Article XVIII, Sec. 13(2)(c).

SUMMARY OF ARGUMENT

Voters will be surprised to know they are eliminating the employment at-will doctrine in Colorado and eliminating the ability for certain private employer and employees to contract. The measure creates a new definition of “just cause” inconsistent with its common law definition that is hidden from voters.

The Initiative further hides the fact that it repeals the right of covered private employees from contracting with its employers. Grouping these hidden and distinct purposes under the broad theme of just cause for the discharge or suspension of an employee violates the single subject requirement because the connection is too broad and too general to make them part of the same subject.

The title, ballot title, and submission clause of the Proposed Initiative are misleading and do not correctly and fairly express the initiative's true intent and meaning. The Proposed Initiative: (1) fails to express the purpose of the Initiative to repeal the employment at-will doctrine; (2) fails to clearly express that the measure creates a new "just cause" standard governing the suspension and discharge of all employees in Colorado; and, (3) fails to express that the measure eliminates the constitutional right to contract.

ARGUMENT

I. THE PROPOSED INITIATIVE VIOLATES THE SINGLE SUBJECT REQUIREMENT BY GROUPING HIDDEN AND DISTINCT PURPOSES UNDER THE BROAD THEME OF REQUIRING JUST CAUSE FOR THE SUSPENSION OR DISCHARGE OF EMPLOYEES

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. The subject matter of an initiative must be necessarily and properly connected by something more than a broad "common characteristic." *In the Proposed Initiative for "Public Rights in Waters II,"* 898 P.2d 1076, 1080 (Colo. 1995).

An initiative with multiple subjects may not be offered as a single subject by stating the subject in broad terms. *See In the Matter of the Title, Ballot Title and*

Submission Clause, for 2007-2008 #17, 172 P.3d 871, 873-4 (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 the single subject requirement. *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).*

A. The Initiative Repeals Colorado’s Longstanding Employment At-Will Doctrine for Certain Private Employment Relationships

The purpose of the Initiative is to repeal the employment at-will doctrine.

The purpose of the Initiative is hidden from signers of the petition and voters. 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. Either party may terminate the employment relationship for any cause or no cause, except for an illegal reason.

B. The Initiative Creates Its Own Definition of “Just Cause” that Impliedly Repeals the Common-Law Definition

Under the proposed constitutional amendment, no employee can be discharged or suspended unless the employer has first established the newly-created definition of “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” is defined in the text 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;
- (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 and adversely affect the employer and are documented by the employer, pursuant to subsection (3) of this section.

There are several problems with this definition. First, it does not merely modify the definition of “just cause,” but modifies the common law definition. For example, in *Ricci v. Davis*, 627 P.2d 1111 (Colo. 1981), a teacher was terminated for having inappropriate sexual contact with five female students. He appealed, claiming he could only be terminated for “just cause” under his contract. This Court upheld his dismissal, saying his conduct was “morally offensive.” Thus, this Court has established that “morally offensive conduct” is “just cause” for termination.

Yet, he could not have been fired under the Initiative.¹ He was not charged with, much less convicted of, a “crime involving moral turpitude.” None of the other itemized lists of what constitutes “just cause” apply. Thus, Colorado common law has already defined “just cause” and has done so differently than the Initiative. This is a completely separate subject than doing away with at-will employment and is not addressed by the Initiative.

Second, the definition is misleadingly and incomplete. As discussed more fully below, the proponents are using the catch phrase “just cause” to garner support for the Initiative. If they had used some neutral phrase to set out when an employee could be fired, this inclusion of a separate subject constituting grounds for termination would not be so egregious.

C. The Initiative Eliminates the Current State Constitutional Right to Freedom of Contract

The Initiative eliminates a person’s fundamental right to contract as currently provided for under the United States and Colorado Constitution. United States Constitution, art. I, § 10; Colo. Const. art. II, § 11 (prohibiting laws that

¹ Mr. Blake recognizes that *Ricci* involved a teacher with a collective bargaining agreement, and thus would not come under the Initiative. The fact that the employee could only be terminated for “just cause” under his employment contract is what matters, however, the fact that the contract was a collective bargaining is irrelevant. That is, *Ricci* would have been analyzed exactly the same if it had been a private contract (and therefore subject to the Initiative) rather than a union contract.

impair existing contractual obligations).² Nothing in the Initiative provides that it shall not apply to any existing contract of employment. This is hidden to the voter who will be surprised by its impact.

This Court has repeatedly held that initiatives that worked an implied repeal upon an already existing provision of the Constitution contained a second subject. *E.g., In re Title and Ballot and Submission Clause for 2005-2006 #55*, 138 P.2d 273 (Colo. 2006) (implied repeal of constitutional guarantee of a system of justice open to all persons and implied repeal of due process and habeas corpus guarantees constituted multiple subjects); *In the Matter of the Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #104*, 987 P.2d 249, 256 (Colo. 1999) (implied repeal of existing constitutional provision a second subject); *In the Matter of the Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #29*, 972 P.2d 257 at 264-265 (Colo. 2000) (implied repeal of existing constitutional provision a second subject); *In the Matter of the Title, Ballot Title and Submission Clause, and Summary for 1997-1998 #64*, 960 P.2d 1192, 1198 (Colo. 1998) (indirect repeal of existing constitutional provision a second subject).

² Although not relevant for this analysis, the Objector notes that this provision is certainly unconstitutional under the Contracts Clause of the U. S. Constitution. The United States Constitution art. I, § 10 provides that contractual rights shall not be impaired.

Here, the Initiative impliedly repeals the current Colorado constitutional freedom of contract for employers. If an employer currently has more than 20 full-time, at-will employees, then the employer has the constitutional right to terminate them for any reason or no reason. Under the Initiative, however, the employer loses this right and thus the Initiative interferes with an existing contract right in violation of the Colorado Constitution, and implicitly repeals that constitutional right for the employer. Under the cases above, this is a separate subject. The Initiative therefore contains at least two subjects.

II. THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE ARE CONFUSING, MISLEADING, UNCLEAR, AND HIDE THE PURPOSE AND EFFECT OF THE PROPOSED INITIATIVE

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), supra*. "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.'" *In re Proposed Initiative for 1999-2000 # 37, 977 P.2d 845, 846 (Colo. 1999)*. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 # 104, supra* (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 title alone 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 1077 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).

The Court has stated that it will “characterize the proposal sufficiently to enable review of the Title Board’s action.” *In re Initiative for 1999-2000 #258(A)*, 4 P.3d 1094, 1098 (Colo. 2000) (citing *In re Ballot Title 1999-2000 # # 245(f) & 245(g)*, 1 P.3d 739, 743 (Colo. 2000)). This Court must examine “an initiative to determine whether or not the constitutional prohibition against initiative proposals containing multiple subjects has been violated.” *In re Initiative #30*, 959 P.2d 822,

825 (Colo. 1998). Titles must “unambiguously state the principle of the provision sought to be added, amended or repealed.” *In re Title, Ballot and Submission Clause, and Summary for 1999-2000 # 258(A)*, 4 P.3d at 1098 (Colo. 2000) (quoting *In re Ballot Title 1999-2000 # 104*, 987 P.2d 249, 254 (Colo. 1999)).

A. The Ballot Title is Misleading because it Does Not Clearly State it is Eliminating the “At Will” Employment Doctrine

The at-will employment doctrine has existed since before the United States was an independent country. It has existed in Colorado since territorial times. Such an enormous change in Colorado law should be clearly revealed in the Title. The failure of the Title to say “elimination of at-will employment” alone is grounds to reverse. Under *Proposed Initiative 2001-02 #43*, and *Ballot Title 1997-1998 #62* the title fails because it does not reveal this key feature of the Initiative.

B. The Ballot Title is Misleading Because it Does Not State it is Eliminating the Fundamental Right to Contract

The title, ballot title and submission clause fail to express the fact that the Initiative unconstitutionally affects existing contracts, eliminating the rights of employers to terminate existing employees for reasons sufficient to the employer, even if it is not “just cause” in the eyes of the labor unions promoting the Initiative. The Fourteenth Amendment to the United States Constitution prohibits the states

from entering laws which impair obligations of contract. *See 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.*

In this case, there is no exception under the Initiative for existing contracts. That means the Initiative is affecting existing contracts in violation of existing constitutional rights of employers, but this is not revealed in the Title. Again, under *Proposed Initiative 2001-02 #43*, and *Ballot Title 1997-1998 #62*, both *supra*, the title fails because it does not reveal this key feature of the Initiative.

C. The Title, Ballot Title and Submission Clause Contain an Impermissible Catch Phrase, "Just Cause"

The Title uses the impermissible catch phrase of "just cause" that is likely to mislead the voters because it has an accepted meaning that does not reflect the content of the Initiative. As noted above, for example, "just cause" has already been determined in this exact same context (grounds to terminate an employee) to

include grossly immoral conduct, yet this Initiative would not allow termination for that reason.

“It is helpful to recall that voters place primary, if not absolute, reliance upon the board’s product when deciding whether to support or oppose proposed initiatives. . . . Recognizing the profound influence such language could have on voters, this court has steadfastly prohibited the use of ‘catch phrases’ when words chosen by the board in drafting titles have suggested particular meanings of a proposal rather than merely summarizing its contents.” *In re Proposed Initiative Concerning Drinking Age in Colo.*, 691 P.2d 1127, 1134 (Colo. 1984) (Kirshbaum, J. dissenting).

“A ‘catch phrase’ consists of ‘words which could form the basis of a slogan for use by those who expect to carry out a campaign for or against an initiated constitutional amendment.’” *In re Proposed Initiative Designated “Governmental Business”*, 875 P.2d 871, 876 (Colo. 1994) (“*Governmental Business*”).

“Evaluating whether particular words constitute a slogan or catch phrase must be made in the context of contemporary public debate.” *Id.* (citing *In re Workers Comp Initiative*, 850 P.2d 144, 147 (Colo. 1993)).

Governmental Business disallowed the inclusion of the catch phrases “consumer protection” and “open government,” in spite of that fact that those

phrases were included in the Initiative itself. The Court concluded that they could form the basis of slogans for use in a campaign favoring the Initiative, which imposed tort liability on governmental business activities intended for consumer protection, tax liability on governmental business activities, and restriction of governmental lobbying. *See id.* at 875.

In considering the phrases, the Court decided that:

[g]iven the negative implication of “closed government,” it is clear that the phrase “open government” could be used as a slogan for proponents of the Initiative. . . . Similarly, the phrase ‘consumer protection’ could be used as a slogan by those supporting the Initiative. As used in contemporary public debate, ‘consumer protection’ encompasses issues pertaining to the safety of goods and services, the assurance that those goods and services comport with governmental standards, and the absence of fraud in labeling and advertising.

Id. at 876; *see also*, *Matter of Title, Ballot Title, Submission Clause, and Summary, Adopted April 4th, 1990, Pertaining to the Proposed Initiative on Surface Mining*, 797 P.2d 1275, 1281 (Colo. 1990) (holding that the title, which included words surface mining project “may scar the land,” was fair and accurate because repeated operative language of proposed amendment).

Here, “just cause” is clearly such a catch phrase, designed to gather support without contributing to understanding. Had the proponents of the Initiative provided a neutral term for their newly-created limited grounds for termination,

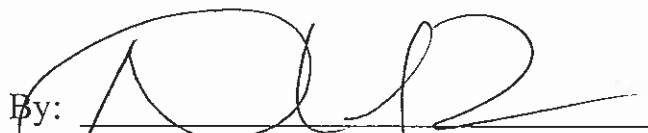
that might have been acceptable, but they did not. They instead used a well-known term in a manner different than it is commonly understood. Certainly as many voters are likely to be as blindly in favor of “just cause” as would have been in favor of “consumer protection” and “open government.”

CONCLUSION

Petitioner respectfully requests that this Court reverse the State Title Board’s action and to direct the Board to strike the title and return the Initiative to its proponents.

Respectfully submitted this 29th 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:

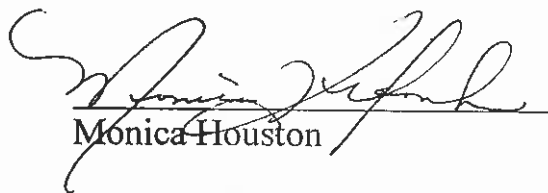
1445 Market Street
Denver, CO 80202

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April 2008, a true and correct copy of the foregoing **PETITIONER'S OPENING BRIEF** was Hand Delivered as follows to:

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

Maurice G. Knaizer, Deputy AG
Colorado Department of Law
Public Officials Unit
1525 Sherman Street, 5th Floor
Denver, CO 80203


Monica Houston

RECEIVED

MAR 17 2008

ELECTIONS
SECRETARY OF STATE

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

*Proposed Initiative
2007-2008
#76*

FINAL

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) NEGLIGENCE 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

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MAR 07 2008

ELECTIONS
SECRETARY OF STATE
March 7, 2008

12:38 P.M.
K

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

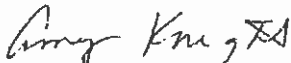
Re: Initiative 2007-08 #76

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
Denver, Colorado 80221
303-429-2191

Larry Ellingson
8517 Bluegrass Circle
Parker, Colorado 80134
720-530-5592

Ballot Title Setting Board

Proposed Initiative 2007-2008 #76¹

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?

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.*

INITIATIVE TITLE SETTING REVIEW BOARD
Wednesday, March 19, 2008
Secretary of State's Blue Spruce Conference Room
1700 Broadway, Suite 270
Denver, Colorado

2007-2008 #76
Just Cause for Employee Discharge or Suspension

William A. Hobbs, Deputy Secretary of State
Daniel D. Domenico, Solicitor General
Daniel L. Cartin, Deputy Director of the
Office of Legislative Legal Services
Maurice G. Knaizer, Deputy Attorney General
Cesi Gomez, Secretary of State's Office

A P P E A R A N C E S

For the Proponents: Mark G. Grueskin, Esq.
Isaacson Rosenbaum, P.C.
633 17th Street, Suite 2200
Denver, CO 80202
303.292.5656
mgrueskin@ir-law.com

For the Objectors: Douglas J. Friednash, Esq.
Fairfield and Woods, P.C.
1700 Lincoln Street, Suite 2400
Denver, CO 80203
303.830.2400
dfriednash@fwlaw.com

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MAR 23 2008

FAIRFIELD & WOODS, P.C.

Page 2	Page 4
<p>1 PROCEEDINGS</p> <p>2 MR. HOBBS: Let's go ahead and resume then.</p> <p>3 The time is 3:22 p.m. The next item on our agenda is</p> <p>4 2007-2008 #76, Just Cause for Employee Discharge or</p> <p>5 Suspension.</p> <p>6 Mr. Grueskin, I think you, likewise, are</p> <p>7 representing proponents here. Perhaps we could see if</p> <p>8 there are any -- well, if you have any general comments</p> <p>9 or if there's questions from the Board.</p> <p>10 MR. GRUESKIN: Mr. Chairman, this is a</p> <p>11 version of #62 that the Board has already had some</p> <p>12 extensive proceedings on.</p> <p>13 I believe that what this measure does is</p> <p>14 clarifies certain things that were maybe relegated to</p> <p>15 interpretation by making them clear. And in that</p> <p>16 regard, it makes it clear that governmental employees</p> <p>17 are not subject to these provisions; it makes it clear</p> <p>18 that -- I don't remember the other specifics that we</p> <p>19 took care of that were of concern with the Board. I</p> <p>20 recall that governmental issue being the primary one,</p> <p>21 and we've expanded some definitions to provide that</p> <p>22 kind of clarity. But by and large, this is a measure</p> <p>23 that proposes a just cause requirement for employment</p> <p>24 actions, basically.</p> <p>25 MR. HOBBS: Thank you.</p>	<p>1 I don't know how full-time employees are</p> <p>2 defined or part-time employees. I don't know if you</p> <p>3 can get around this by having a 39-hour employee</p> <p>4 instead of a 40-hour employee. Somebody who's been</p> <p>5 working there less than six months also it doesn't</p> <p>6 apply to.</p> <p>7 And when you read the title, and I'll get to</p> <p>8 this in a second, the title doesn't delineate what kind</p> <p>9 of employment relationship this applies to, and I think</p> <p>10 it needs to. And we can get to that on the next aspect</p> <p>11 of it, but clearly people are going to be surprised by</p> <p>12 who this applies to.</p> <p>13 My understanding is that it has also exempted</p> <p>14 out bona fide collective bargaining agreements. I</p> <p>15 don't know what constitutes a bona fide collective</p> <p>16 bargaining agreement. That's not in the title. It</p> <p>17 doesn't explain what "just cause" is in this bill</p> <p>18 title, and it doesn't really go into the process for</p> <p>19 challenging the termination period.</p> <p>20 You know, I think the different</p> <p>21 single-subject piece comes into is that it's related to</p> <p>22 just cause for employee discharge or suspension.</p> <p>23 Again, it's a very broad title for what is actually</p> <p>24 encompassed by it, it is a much more narrow grouping of</p> <p>25 scenarios where this actually applies to it. I think</p>
Page 3	Page 5
<p>1 Are there any questions for Mr. Grueskin?</p> <p>2 If not, then let's turn to the question of</p> <p>3 whether the measure complies with the single-subject</p> <p>4 requirement.</p> <p>5 Mr. Friednash, you're signed up. Would you</p> <p>6 like to comment on the single-subject issue?</p> <p>7 MR. FRIEDNASH: Yes. Thank you.</p> <p>8 Good afternoon. Doug Friednash of Fairfield</p> <p>9 and Woods.</p> <p>10 This measure appears to be somewhat of a</p> <p>11 cleanup of the other just cause initiative that you've</p> <p>12 already heard. I'm not clear on what the purpose of</p> <p>13 this measure is, but it clearly will eliminate at-will</p> <p>14 employment to certain economic relationships; it</p> <p>15 appears to apply to certain employers, a private</p> <p>16 employer that has 20 or more employees where the</p> <p>17 employees have worked for consecutive six months and</p> <p>18 that are full-time employees. It clearly applies to</p> <p>19 those situations.</p> <p>20 It does not apply to governmental entities;</p> <p>21 it's unclear what nonprofit corporations it applies to</p> <p>22 or doesn't apply to, part-time employees; and I don't</p> <p>23 know what -- again, this goes in the Colorado</p> <p>24 constitution so this is not something that the</p> <p>25 legislature can fix.</p>	<p>1 when you deal with constitutional rights and how</p> <p>2 certain things are applied by them, whether you have a</p> <p>3 right to contract, I understand that -- and I think you</p> <p>4 need clarification today.</p> <p>5 I know it's been asserted, I believe in the</p> <p>6 review and comment meeting, that employers would still</p> <p>7 have the right to contract with employees and waive</p> <p>8 these policies. I think that's probably void against</p> <p>9 policy. But these are constitutional pieces that I</p> <p>10 think create separate subjects that are different in</p> <p>11 terms of how it applies and the constitutional impact</p> <p>12 of these measures.</p> <p>13 But the next piece, which I think is even</p> <p>14 more profound, is the fact that this -- the bill title</p> <p>15 is misleading. It's going to be very confusing, and I</p> <p>16 think voters will be really surprised to learn how this</p> <p>17 actually applies. And I think those are some of the</p> <p>18 fundamental problems with this measure.</p> <p>19 MR. HOBBS: Thank you.</p> <p>20 Let me ask, I mean, you did -- you did</p> <p>21 identify a number of questions about the measure -- I</p> <p>22 mean, questions about how to interpret specific aspects</p> <p>23 of the measure. It wasn't clear to me exactly what</p> <p>24 your single-subject objection is. Is it -- can you</p> <p>25 either identify the different subjects that you see, or</p>

Page 6	Page 8
<p>1 are you saying instead that the measure is simply so 2 unclear that it's impossible to identify a single 3 subject? 4 MR. FRIEDNASH: I think that's -- it's the 5 latter, it's so unclear that it's virtually impossible 6 to identify what that subject is. 7 MR. HOBBS: Thank you. 8 Are there questions for Mr. Friednash? 9 MR. FRIEDNASH: Thank you. 10 MR. HOBBS: Is there anybody else who would 11 like to testify on the question of whether the measure 12 complies with the single-subject requirement? 13 Seeing none, I'll turn to Board discussion on 14 that issue. 15 MR. DOMENICO: Well, this seems to have 16 addressed most of -- if I remember correctly, we all 17 voted the previous version of this was a single 18 subject. If anything, I think this is -- because it 19 clears up some of the potential implications that were 20 suggested to be additional subjects, such as creation 21 of this mediation or arbitration regime and affecting 22 the civil service system. Those have been cleared up, 23 I think, in this version. 24 The only potential concern that I -- that I 25 still have is this right to contract issue, which I do</p>	<p>1 standard; and it also gives employees a cause of action 2 against an employer who does a discharge or suspension 3 without establishing just cause. But all those seem, 4 to me, to be germane to the subject, and I think there 5 is a single subject. 6 And I'm also -- I also concur that I don't 7 feel that this is a measure I -- that it rises to the 8 level of where it is so nonunderstandable that the 9 Board can't set a title for it. 10 MR. HOBBS: Is there a motion on the 11 single -- I'll go ahead and move that the Board find 12 that the measure comprises a single subject and proceed 13 to set a title. 14 MR. DOMENICO: I'll second that motion. 15 MR. HOBBS: Any further discussion? If not, 16 all those in favor say aye. 17 Aye. 18 MR. CARTIN: Aye. 19 MR. DOMENICO: Aye. 20 MR. HOBBS: All those opposed no. 21 That motion carries 3-0. 22 Then let's turn to the staff draft. And 23 Ms. Gomez is displaying the staff draft on the screen 24 in the room. 25 Mr. Grueskin, have you had an opportunity to</p>
Page 7	Page 9
<p>1 wish the measure would say one way or the other, 2 whether people could contract around this. But the 3 fact that it doesn't is not, to me, enough to make it 4 so unclear as to be impossible to set a title for, it's 5 just one of those things that will have to be worked 6 out in litigation or perhaps implementing legislation. 7 And so I'm pretty comfortable with this as a single 8 subject. 9 MR. HOBBS: And I think I am too. I think 10 Mr. Friednash did identify some questions. But, as 11 Mr. Domenico said, I don't see them as questions that 12 suggest the measure is so unclear that we can't set a 13 title. I think there is a single subject here. So I 14 think I would support the measure with respect to 15 single subject. 16 MR. CARTIN: Yeah. I'd agree with that, 17 Mr. Chairman. It seems to me that one way of looking 18 at the overall purpose of the measure is it's to 19 prohibit an employer from discharging or suspending an 20 employee without first establishing just cause for the 21 discharge or suspension. That seems, to me, to be the 22 overall purpose of the measure. 23 A couple of the outcomes I think that we've 24 talked about here is that it does impact employment of 25 will for places in what's kind of a just cause</p>	<p>1 look at the staff draft and do you have any comments? 2 MR. GRUESKIN: I'd like to share my written 3 comments with you, Mr. Chairman. 4 MR. DOMENICO: Thanks. 5 MR. GRUESKIN: And, frankly, as I pondered 6 this a little bit, I'm not really sure that I'm 7 prepared to defend one of them. I think that the Board 8 made a different change that I'd like to explain. 9 On lines 2 and 3, I think the allusions to 10 several definitions are not nearly as important as the 11 substance of those definitions. Specifically, it seems 12 to me that the language that I've inserted on lines 5, 13 6, and 7 specify those exemptions that apply because of 14 the definitions necessarily than the fact that you have 15 to have 20 employees, if you're nonprofit you have to 16 have more than 1000, and governmental entities are 17 exempted. 18 I suppose you could also include the, you 19 know, non-full-time or part-time employees and the 20 employees covered by a bona fide collective bargaining 21 agreement. It just seemed to me that you're getting a 22 little long there. But I'm certainly not adverse to 23 adding that level of detail. 24 The one change for which I have to apologize 25 to the Board is on line 8 where I say "defining just</p>

<p style="text-align: right;">Page 10</p> <p>1 cause." As I recall now, that issue came up in 2 connection with #62 and the Board felt that there was 3 some description of "just cause" that was more 4 appropriate. I'm -- I think it related to substandard 5 job performance and then a couple of the conditions 6 that are specified at the end of the definition. I 7 would certainly have no problem using that model. 8 I would note, only for the Board, that the 9 last element has changed somewhat. It's no longer a 10 percentage cutoff, but it is, in fact, a factor that 11 relates to specific economic circumstances that 12 directly and affect -- directly and adversely affect 13 the employer. So that probably would need to be 14 tweaked some. 15 But I think other than that the staff draft 16 is largely fine and would suggest -- oh, I've stricken, 17 on lines 11 and 12, the reference to the right of 18 appeal which, in addition to the mediation issue, was 19 one that came up last time. While the right of appeal 20 is expressly in there, it doesn't strike me as a 21 central provision. That's why I've stricken it. It 22 just doesn't -- I can't imagine that people would be 23 surprised that there's a right of appeal from a 24 district court action. 25 MR. HOBBS: Thank you.</p>	<p style="text-align: right;">Page 12</p> <p>1 here. Because it's a constitutional amendment, my fear 2 is that the Courts will look at the plain language of 3 this and not allow employers to contract with employees 4 because it would be against public policy and it wasn't 5 provided for in this. And I think that is a fatal 6 error to this. 7 MR. HOBBS: Thank you. 8 Is there anybody else who would like to 9 comment on the staff draft or the suggestions made by 10 Mr. Grueskin? 11 Then I'll turn to Board discussion. 12 Ms. Gomez, I think, has started incorporating 13 into the staff draft on the screen the changes made -- 14 or suggested by Mr. Grueskin, and I think that would be 15 a good starting point. I guess I would -- unless 16 there's an objection from a Board member, I would like 17 for her to go ahead and incorporate those so that we 18 could take a look at that those and discuss those. 19 I would suggest not -- unless another Board 20 member wants to do this, I would suggest not 21 incorporating the phrase "defining just cause" because 22 I think I would like to propose providing more there 23 like we did for #62. 24 MR. DOMENICO: I agree. And I actually would 25 recommend putting it earlier in the title too.</p>
<p style="text-align: right;">Page 11</p> <p>1 I do like these changes generally, and I also 2 would like to include something about the definition of 3 "just cause" as we did in the case with #62. So at 4 some appropriate time, I'll probably offer that motion. 5 But I think, in general, it's helpful to eliminate from 6 the staff draft the language which just says defining, 7 you know, specified terms. I agree with Mr. Grueskin. 8 I don't think we need to say that the decisions can be 9 appealed. 10 But, Mr. Friednash, would you like to comment 11 on the staff draft or Mr. Grueskin's suggested changes? 12 MR. FRIEDNASH: Yeah. Thank you. 13 I think the more detail the better. I think 14 it makes sense. I think his changes are an 15 improvement. I do think it should indicate that they 16 need to be there within six consecutive months. If 17 they're full-time employees, I think the change with 18 regard to just cause is important because otherwise 19 "just cause" is somewhat of a catchphrase. And I think 20 identifying, you know, the economic circumstances, 21 particularly as found within the scope of just cause, 22 is helpful to the voter. 23 Again, a fundamental problem is the issue of 24 the right to contract, whether or not it's their intent 25 to allow that. In either event, it's not addressed</p>	<p style="text-align: right;">Page 13</p> <p>1 MR. HOBBS: In the case of #62, we put it 2 right after the prohibition that begins on line 9 -- or 3 line 3, I mean, as I recall. 4 MR. DOMENICO: Yeah. I would put it on line 5 4 just after we say "established just cause." And then 6 I would say "defining just cause" to include whatever 7 we said before, adjusted, of course, for the slightly 8 different language. 9 MR. HOBBS: I think that's consistent with 10 what we did on #62. And I think I have a proposal when 11 Ms. Gomez is ready. I think she's still got a couple 12 of more changes to make to incorporate Mr. Grueskin's 13 suggestions. 14 I guess then I'll -- as Mr. Domenico 15 suggested, then in line 4, before the word "requiring," 16 after the semicolon, insert "defining, quote, just 17 cause, end quote, to mean specified types of employee: 18 misconduct and substandard job performance, comma." 19 MS. GOMEZ: And what was that? 20 MR. HOBBS: "Substandard job performance, 21 comma, the filing of bankruptcy by the employer, comma, 22 or" -- here's where it will be a little different so 23 this may take some polishing -- "or documented economic 24 circumstances that directly and adversely affect the 25 employer, semicolon."</p>

4 (Pages 10 to 13)

Page 14	Page 16
<p>1 MR. DOMENICO: Brilliant. 2 MR. HOBBS: Thank you. 3 And if that doesn't match -- okay, I'm 4 getting affirmative nods from Mr. Grueskin. 5 And if -- again, Ms. Gomez, I think, has 6 incorporated the other suggestions of Mr. Grueskin. I 7 don't think I have any other changes. 8 Mr. Domenico? 9 MR. DOMENICO: I have a couple of little 10 things, not related really to what we've just gone 11 through, but -- so if we're ready to kind of move on. 12 MR. HOBBS: Maybe we'll just do it -- just 13 for the sake of efficiency, just keep going and at some 14 point do a motion to adopt these changes. 15 MR. DOMENICO: Yeah. All right. Well, the 16 simplest is, since Mr. Gessler is not here to be a 17 grammarian, I think on lines 8 and 9 instead of "less" 18 it should be "fewer" in both cases. 19 Moving on to slightly more complex issues. 20 On lines 3 and 4, is it really necessary to say "by an 21 employer"? I mean, who else can discharge or suspend 22 an employee? 23 MR. HOBBS: Makes sense to me to drop that. 24 MR. DOMENICO: The other way to write it 25 might be, if you want to make it clear that this is</p>	<p>1 and (I), I think you'd have to say something like 2 "prohibiting the discharge or suspension of an employee 3 who has been a full-time employee for at least six 4 consecutive months and is not covered by a bona fide 5 collective bargaining agreement." 6 I think you start getting into a bit of a 7 mess if you do much more than that. "Full-time" seemed 8 easy enough to include that it may not be a problem. I 9 just bring that up for discussion. 10 MR. HOBBS: I don't have any strong feelings 11 about it one way or the other. I agree that it would 12 be fairly easy to say full-time. You know, we start to 13 get into more details that I don't know that we need to 14 cover. You know, I just don't feel strongly about it 15 one way or the other. 16 MR. DOMENICO: Yeah. I mean, I suppose that 17 the title, as it is, fulfills our duty, but I don't 18 know if we could do a slightly better job by making it 19 a little bit more detailed. Whether those limitations 20 on the employees that this applies to is material is 21 just really sort of hard for me to judge. 22 I mean, I guess I could see some individuals 23 out there who are part-time employees or who would not 24 be covered by this voting for it and then maybe being 25 surprised that -- when it passes that it doesn't apply</p>
Page 15	Page 17
<p>1 kind of imposing something on employers, would be 2 "prohibiting employers from discharging or suspending 3 an employee." Either of those would be an improvement, 4 I think. 5 MR. HOBBS: I agree. I don't have a 6 preference between the two. 7 MR. DOMENICO: Well, I would probably just 8 delete it then, the three words "by an employer." 9 MR. HOBBS: I support that. 10 MR. CARTIN: Me too. 11 MR. DOMENICO: The only other comment I had 12 was in response to an issue that Mr. Grueskin actually 13 raised a little bit himself and Mr. Friednash also 14 mentioned, which is whether we need to explain that 15 this only applies to certain employees, full-time 16 employees who have been employed for at least six 17 consecutive months. 18 I'm not sure -- I mean, we could pretty 19 easily include the full-time concept simply by, on line 20 3, in front of an -- change "an" I guess to "a" 21 full-time employee would be a pretty succinct way of 22 including the full-time concept, if we think it's 23 necessary. 24 If we wanted to include both of those 25 concepts that are in, I guess, (b)(1) -- or just (b)(1)</p>	<p>1 to them. On the other hand, I can sort of see people 2 who could vote against it because they think it's too 3 broad and should include some limitations like are, in 4 fact, included. 5 So there may be kind of, on both sides of the 6 equation, a sense that there's -- that there's 7 something missing there, but I don't know how to -- 8 whether it really rises to the level of materiality. 9 Probably not enough that I would vote against it if it 10 didn't include some of that. But I just raise it as a 11 possibility. 12 MR. CARTIN: And I -- I guess I appreciate 13 your raising it and getting it out there on the table 14 because I, too, am not sure that it rises to the level 15 of materiality. I guess at this point I'm comfortable 16 with not going to that level of detail, but I 17 appreciate the discussion. 18 MR. HOBBS: Yeah, I think I'm okay with the 19 way it is. I'm probably -- would be most persuaded 20 about adding "full-time" in there, but I think I'm -- I 21 think I'm okay with it as is. 22 I guess I -- do you have another suggestion? 23 MR. DOMENICO: No, that's all I've -- all 24 I've got. 25 MR. HOBBS: I'd like to raise the question of</p>

5 (Pages 14 to 17)

Page 18	Page 20
<p>1 whether we need the last clause that says "authorizing 2 the general assembly to enact legislation to facilitate 3 the purposes of this amendment." I frequently don't 4 remember very clearly our precedent on things, but is 5 that really helpful or necessary to point out? Is it a 6 significant feature? 7 MR. CARTIN: I think we've left it out in the 8 past when that type of a statement has been included. 9 So if you wanted to delete it. 10 MR. HOBBS: You know what, I think we've 11 usually left it out, although I just noticed, having 12 just said that, in #62 we did keep it in. Maybe we are 13 perfectly inconsistent, but I just -- again, it doesn't 14 seem like anything that would be too surprising. 15 I think that would be the general rule of a 16 constitutional amendment, that the legislature can fill 17 in gaps and facilitate the purposes of a constitutional 18 amendment. I guess I'll -- just for the sake of 19 discussion, I would suggest that we drop that phrase. 20 MR. CARTIN: I'll move that suggestion. 21 MR. HOBBS: And then I'll -- I'll second 22 that. 23 And then we would need to insert an "and." 24 MS. GOMEZ: Am I deleting this whole thing? 25 MR. HOBBS: Yes, delete that. And then I'm</p>	<p>1 "concerning just cause for action against an employee 2 by an employer." When I looked at that again -- and I 3 know -- it's my recollection that that is the statement 4 of the single subject for #62. 5 And to cut to the chase, what I wondered was 6 whether or not it would be clearer to simply state an 7 accurate -- and an accurate statement of the single 8 subject to -- instead of saying "just cause for action 9 against an employee by an employer," basically move the 10 language that appears on lines 3 and 4 up and so -- up 11 to the statement of the single subject. 12 So it would say, "An amendment to the 13 Colorado constitution concerning a prohibition on the 14 discharge or suspension of an employee unless the 15 employer has first established just cause," and then 16 "and concerning" -- "and, in connection therewith," 17 defining "just cause" to mean specified types of 18 employee misconduct. 19 I just wanted to put that out there for Board 20 discussion because when I looked at "concerning just 21 cause of an action against an employee by an employer," 22 you know, to me, that didn't send a message about 23 discharge or suspension. And I know we'd have a 24 discharge or suspension in the title, but if we ever 25 got to the -- you know, if the Board wanted to even</p>
Page 19	Page 21
<p>1 not sure where the "and" goes then, but preceding the 2 last remaining clause. 3 MR. CARTIN: Line 13, preceding "allowing"? 4 MR. HOBBS: Yeah, just before the last -- 5 yeah. Yes, I think that would be at the end of line 12 6 and beginning of line 13. Okay. 7 Actually, we haven't done any motions yet. 8 Mr. Cartin, I think your motion was to make that 9 change, but maybe we'll just -- if you want to withdraw 10 your motion -- 11 MR. CARTIN: I'll withdraw it. 12 MR. HOBBS: -- then I'll withdraw the second 13 and have one motion that covers -- it sounds like 14 there's some consensus so far on the changes that have 15 been made so have one motion that covers everything. 16 Mr. Cartin? 17 MR. CARTIN: Did you -- I had one other item, 18 Mr. Chair. Do you want to talk about that now, or did 19 you want to go -- 20 MR. HOBBS: Sure. Let's go ahead and see if 21 we can dispose of all of the issues. 22 MR. CARTIN: I know it's late in the day and 23 the other two Board members have been here since 8:30, 24 but I just wanted to very quickly revisit the statement 25 of the single subject in the staff draft, which is</p>	<p>1 kind of address the suggestion, I guess I'd advocate 2 that it would be appropriate to go ahead and have that 3 conjunctive there. That's my suggestion. 4 MR. DOMENICO: Well, to begin with, I think 5 this is the single subject we had in 62, but I think 6 the language in 62 was closer to what we've got here. 7 I don't think -- I don't think that it specifically 8 limited itself in the way this one does. 9 My recollection is that the lead-in in 62 was 10 closer to this language and that it said an employer 11 may not take action against the -- adverse action or 12 something like that against an employee was probably 13 why we used that language. And so I don't think we 14 need to worry about doing something different here 15 because my recollection is 62 was a little bit 16 different. That's the starting point. 17 The specific suggestion you made, I'm not 18 sure I understood it exactly. But if the suggestion 19 was simply to say, "An amendment to the Colorado 20 constitution concerning requiring just cause for" -- 21 MR. CARTIN: No, it would have been 22 "concerning," and drop down to line 3, "a prohibition 23 on the discharge or suspension of an employee unless 24 the employer has first established just cause." That's 25 it.</p>

6 (Pages 18 to 21)

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<p>1 MR. DOMENICO: I see. Well, then we get back 2 to the same discussion we just had where I have a bit 3 of a problem stating the single subject that way, that 4 is, as a noun, and then not also including the action 5 that's being taken in that sense after the "in 6 connection therewith" language. 7 So my suggestion is if we're going to do 8 something like that, it should be similar to what we 9 did previously. It would be something more like, "An 10 amendment to the Colorado constitution prohibiting the 11 discharge or suspension of an employee by an employer 12 unless the employer has first established just cause." 13 And then I would just go straight through it as is, but 14 then you don't have "in connection therewith," which 15 was the problem last time. Your problem, not mine. 16 MR. CARTIN: Yeah, I guess I hear you. Aside 17 from that, I'm just wondering if there isn't a better 18 way to state the single subject than "just cause for 19 action against an employee by an employer." 20 MR. DOMENICO: Well - okay. 21 MR. CARTIN: That's all. 22 MR. DOMENICO: Is the problem that you have 23 with that the use of action, that it's kind of unclear 24 what that means? 25 MR. CARTIN: Yeah. I guess the problem that</p>	<p>1 reading the subject that "just" in that sense is tied 2 in with the idea of justice rather than trying to limit 3 for some reason what comes after it. And so "cause" - 4 if you just say "cause" in the first part, it avoids 5 that potential trouble. It still accurately captures 6 what's going on. 7 It doesn't really resolve the rest of your 8 concerns, but I do think improves it a little bit since 9 we later say - you know, get more specific. It gets 10 much more specific after the "in connection therewith" 11 clause. I don't know if that does anything to resolve 12 the problems you had, but it was something that I 13 thought about on this and on 62. 14 MR. HOBBS: I think if we - I would be okay 15 with removing the word "just" so that it's - the 16 expression of the single subject is cause for action 17 against an employee. 18 I think we probably - it is kind of an 19 awkward phrase, you know, action against an employee, 20 and I think we probably got there, at least speaking 21 for myself, because it's discharge or suspension. And 22 we - again, faithful allegiance to trying to express a 23 single subject, we always risk something when we put a 24 conjunction in as if there were two different things. 25 You know, in reality, I think this is an</p>
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<p>1 I have with it is that I don't think that it conveys to 2 the reader what the measure - what the purpose of the 3 measure is, what the subject of the measure is as if - 4 as it would if you put up front that it's prohibiting 5 the discharge or suspension of an employee. 6 Just cause for action against an employee - 7 you know, I think it worked in 62, it can work here. 8 It's fine, it's very legal, it's very cloudy - as 9 opposed, would be my argument, to just stating 10 "prohibiting the discharge or suspension of an employee 11 unless the employer has first established just cause," 12 because, to me, that's the single subject. 13 But it is late in the day and I just wanted 14 to put that out there. Because the more I looked at 15 "concerning just cause for action against an employee 16 by an employer," I thought we could do better. 17 MR. DOMENICO: I do think that's a little bit 18 odd. I thought one thing we could consider is just 19 removing "just" from that part of it since that's kind 20 of a term of art, I think, and given that it has two 21 very different meanings, one meaning fair or 22 reasonable, I guess, and the other one meaning only or 23 some sort of minimization of what's coming after it. 24 If you don't already know what this is about 25 and you're not a labor lawyer, you may not know that in</p>	<p>1 example where discharge or suspension actually is one 2 thing. I'm comfortable with that, that this is not a 3 violation of single subject, but I think we were simply 4 trying to improve the appearance of the expression of 5 the single subject by not including a conjunction. 6 You know, I'm okay with the way it is just 7 because we pretty quickly - it's a very short 8 statement where we pretty quickly then elaborate by 9 saying what the prohibition is. 10 MR. CARTIN: Okay. 11 MR. HOBBS: I don't know. I mean, I - 12 MR. CARTIN: Well, I appreciate it. 13 MR. DOMENICO: What if we changed 14 "concerning" to "requiring"? That does a little bit, I 15 think, to clarify. 16 MR. HOBBS: You know, again, my concern, not 17 surprisingly, is once we start using i-n-g, you know, 18 actions, we might as well just go ahead and say "an 19 amendment prohibiting the discharge or suspension of an 20 employee" and kind of skip over a subject and state the 21 main thing that the measure's doing. But I sort of 22 lost that battle last time so I'm prepared for the 23 worst on this one. 24 MR. DOMENICO: Well, I mean, I think 25 Mr. Cartin said he thought it would be an improvement</p>

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1 essentially to do that, and I think I agree. Although
2 if--
3 MR. CARTIN: For 73?
4 MR. DOMENICO: I don't know. I can't keep
5 track of the numbers.
6 MR. CARTIN: The first one.
7 MR. DOMENICO: My -- I think my first
8 preference would be to do what we did on the last one
9 and just skip over trying to use the "concerning/in
10 connection therewith" language -- well, actually my
11 first choice would be to go beyond what we did on the
12 last one and just say -- basically, cut out everything
13 from "concerning" up to "prohibiting" on line 3 and
14 just start right there. I think that expresses this
15 thing. I think the single subject is in there, it's
16 right at in the front.
17 I think the problem we're having is that what
18 we want to do -- to be clear and accurate and express
19 what's really going on, what we really are saying we
20 want to do is basically repeat the first part of the
21 "prohibiting" language word for word in a noun form
22 after "concerning." And my point is that I think we
23 accomplish everything we're required to accomplish more
24 clearly just by not going through that motion.
25 And so if we just cut everything after

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1 "constitution" on line 1 up through "governmental
2 entity" on line 3, we'd be where we want to be. We
3 would have the single subject expressed, although not
4 as a noun as we talked about before, and we would be
5 accurately conveying what's going on.
6 So that would be my first choice. That's
7 beyond even what we did last time because it gets rid
8 of the "in connection therewith" language, but I think
9 that's -- it's better without that language if we're
10 going to go this direction.
11 If we're not going to go this direction, I
12 think you're better off essentially just repeating the
13 main action as a noun after "concerning" and then just
14 starting all over and listing everything, which is sort
15 of what we had up there but we tried to paraphrase the
16 main action. I would just -- if we're going to do
17 that, I would get rid of "cause" and leave it;
18 otherwise, I'd do this. I mean, I'd get rid of "just"
19 and leave it as "cause"; otherwise, I'd do this.
20 MR. HOBBS: Again, my preference, just being
21 a traditionalist, is to adopt the latter approach that
22 Mr. Domenico just suggested.
23 And I guess one other last defense for
24 that -- and maybe this is in the form of a question for
25 Mr. Cartin. My recollection is there's some suggestion

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1 in the statute that we follow the rules employed by the
2 general assembly. Although I don't have the language
3 in front of me so I might be misstating that.
4 But, in general, we have tried to set titles
5 like the general assembly sets titles for bills so
6 it -- that's just a related concern that I have as
7 we -- if we start, as a regular thing, not following
8 the convention of saying concerning something, and, in
9 connection therewith, doing something. But it's just
10 based on my belief that that's a departure from the way
11 the generally assembly normally sets titles, which also
12 is under a single-subject requirement.
13 MR. DOMENICO: Maybe they should start
14 following our lead.
15 MR. CARTIN: Well, Mr. Chair, I'd like to try
16 and advance the ball here. I think that Mr. Domenico,
17 as always, has ably articulated the basis for his
18 desire to be a revolutionary here in connection with
19 crafting these titles. And in all seriousness, I think
20 that there's a lot there.
21 What I'd like to do is I'd like to go ahead
22 and -- and I'm -- I don't -- currently the "just cause
23 for action against the employee," in my mind, striking
24 "just" doesn't address any of my concerns as far as
25 that particular phrase goes.

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1 So what I'd like to do is I'd like to move
2 that the staff draft be modified, and I think it would
3 behoove us to get the proponents' take on this, to say
4 "concerning" -- is to strike "just cause for action
5 against an employee by an employer" and insert "a
6 prohibition on the discharge or suspension of an
7 employee unless the employer has first established just
8 cause, comma, and, in connection therewith" and then
9 dropping down to defining "just cause," invoke that
10 motion up or down. And if that motion fails, then I
11 would propose going back to the language in the staff
12 draft and moving forward with that. So that would be
13 my motion.
14 MR. HOBBS: "Concerning a prohibition," et
15 cetera; is that correct?
16 MR. CARTIN: Right.
17 MR. HOBBS: I can live with that. I think
18 that's fine. I know Mr. Domenico might be concerned
19 that that -- when you say it's just about this, it
20 doesn't necessarily tell you that it's doing that, that
21 it's prohibited.
22 MR. DOMENICO: Yeah. I mean, that's the
23 concern I have with doing it that way, is you give an
24 impression that the measure is about this prohibition,
25 but what it's actually doing is defining "just cause"

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<p>1 and not implementing this requirement, that the 2 requirement somehow is just what it's about. 3 And maybe I'm -- maybe that's a misreading of 4 how an average person would read it, but -- and it 5 seems like a little bit less of a problem in this one, 6 frankly, just because of, I guess, how it's worded and 7 what it does than in the last one where I really would 8 have been concerned if we had done that. This one is a 9 little bit less of a problem. So I might like to see 10 it and just make sure, but I don't know. 11 MR. HOBBS: Mr. Grueskin? 12 MR. GRUESKIN: Let me see if I can maybe 13 propose yet one more alternative so that all you 14 boom-throwers can find some common ground. 15 What if it was, "An amendment to the Colorado 16 constitution requiring an employer to establish just 17 cause before discharging or suspending an employee?" 18 That has the action that I think Mr. Domenico seeks and 19 it encapsulates that main prohibition clause. 20 Mr. Hobbs, my recollection is yours, which is 21 that the Board defaulted to action against an employee, 22 because of the concern about using a conjunction in the 23 single-subject description. 24 But I agree with the Board. I think that 25 there's -- that while the existing single-subject</p>	<p>1 thing, a subject, and then saying -- if it's not clear 2 what the measure does about that thing, then 3 practically starting over again, I think that's been 4 our custom, but saying what it does about that subject. 5 That's my position anyway. 6 MR. CARTIN: And I -- I think your suggestion 7 is a good one. I think that I'm going to, for the time 8 being, stick with my motion. I don't know if I got a 9 second, maybe not. 10 MR. HOBBS: And, again, what was yours? What 11 we have? 12 MR. CARTIN: Yeah. 13 MR. HOBBS: Or not? 14 MR. CARTIN: It would amend the staff draft 15 as it appears on the screen starting on line 1. 16 Instead of "just cause for action against an employee 17 by an employer," it would say "a prohibition" -- I 18 don't know if it's at odds or against -- "a prohibition 19 on the discharge or suspension of an employee unless 20 the employer has first established just cause." 21 And then you would strike "just cause for 22 action" and you'd go right to "and, in connection 23 therewith." There would be a comma after "cause" and 24 it would be "and, in connection therewith." And then 25 on lines 4 and 5, essentially you'd strike everything</p>
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<p>1 statement is adequate, that its functional equivalent 2 could be used without doing damage either to our 3 potential in a Supreme Court appeal or voter 4 understanding. So I don't know if that's helpful. I'm 5 sensitive to wanting to push that phrase up to the 6 beginning. 7 I also don't have a problem with the 8 "prohibiting" language or the "prohibition on." I 9 think that that's as close to the head of the pin as I 10 can get. 11 MR. HOBBS: In a nutshell, I mean, I still 12 want to state a subject and not an i-n-g thing and 13 describe an action, but -- and so I'd rather -- 14 personally, I'd rather not depart from that. 15 I don't mind actually, in the expression of 16 single subject in this case, saying "discharge" or 17 "suspension" if that helps. Again, I think that is a 18 single thing. I'm more comfortable with that, even 19 though I was trying to avoid it. You know, it's like 20 driving while impaired or intoxicated. I can't 21 remember what the other phrase is. It's really all one 22 thing even though there may not be one phrase for it. 23 MR. GRUESKIN: That's a good point. 24 MR. HOBBS: You know, again, I may be now in 25 the minority, but I just would rather say concerning a</p>	<p>1 up to "defining" on line 5. That's one motion. 2 MR. HOBBS: I'm okay with that. 3 MR. DOMENICO: If we weren't also striking 4 lines 4 and 5, I'd be okay with it. I think it's a 5 step back as it is. 6 MR. CARTIN: So you would want to repeat it 7 in 4 and 5? 8 MR. DOMENICO: Yeah. If we're going to stick 9 with this structure, I think after "in connection 10 therewith" should probably include everything that is 11 being done in this measure. 12 MR. CARTIN: And I appreciate that, but I 13 guess I... 14 MR. DOMENICO: Yeah. I mean, I'll probably 15 wake up tomorrow and think I'm being silly. But it 16 just seems to me that this has the potential for 17 suggesting that -- well, we're doing an amendment 18 that -- I mean, the whole point, right, of using this 19 structure is to state in the first part just what it's 20 about and then after "in connection therewith" tell 21 people how you're addressing that issue? 22 This, to me, suggests -- or it could suggest 23 to some people that, all right, we've got a 24 prohibition, and, in connection therewith, we're voting 25 on an amendment that defines "just cause" and does</p>

<p style="text-align: right;">Page 34</p> <p>1 these other things, but the prohibition is somewhere 2 else. 3 And as I said, I'm a little less concerned 4 about it in this case because the definition of "just 5 cause" really is the most important thing, and it's 6 right there. On the other hand, I think it really is 7 material to what's going on here, that we're creating a 8 new prohibition. 9 And this just says we're doing something 10 concerning a prohibition that, to me, isn't quite clear 11 enough, especially given that the reason we do this is 12 to tell people the subject is here after "concerning," 13 the action is here after "in connection therewith." So 14 this way just doesn't tell them that they're taking 15 action on creating a prohibition. That's the concern I 16 have. 17 And I can understand why you think that it's 18 clear enough. And even if it's not clear, what's 19 really important, I guess, is how you define "just 20 cause." But I think it's a step - I think this goes 21 in the right direction in the sense of trying to not 22 needlessly repeat ourselves. But trying to do that 23 while at the same time fitting it into our traditional 24 structure I think is a mistake. 25 And if we're going to mess around with the</p>	<p style="text-align: right;">Page 36</p> <p>1 concerning a - you know, concerning the something and 2 then and requiring whatever the measure does. 3 In this case, I do think it's probably clear 4 enough. And I could be wrong about this, but I think 5 the reader can probably directly understand this to be 6 that this is creating a prohibition. 7 You know, if I'm wrong about that, then I 8 certainly, of course, would rather go back to prior 9 form and just say "concerning, you know, just cause" or 10 whatever and then elaborate on what the measure does, 11 if it's not clear, from what we have on the screen 12 right now, that this is creating a prohibition. But we 13 have different points of view. 14 MR. DOMENICO: Yeah. And just to be clear, I 15 think I would be willing to - if instead of 16 "concerning a prohibition," if we just said 17 "prohibiting the discharge." That would be 18 essentially, I think, what we did on 75. 19 If we don't do that, I think this creates the 20 kind of potential confusion, especially if you think 21 about the way the question - the submission clause 22 would look may be a little bit easier to see my 23 concern, where it would just say, "Shall there be an 24 amendment to the Colorado constitution concerning a 25 prohibition," I mean, what people would really be</p>
<p style="text-align: right;">Page 35</p> <p>1 subject/action structure, we should just get rid of the 2 "concerning" - just get rid of the structure entirely 3 and say, "An amendment to the Colorado constitution 4 prohibiting" and just say what we're doing. Because I 5 do think that the subject is subsumed within the 6 prohibition in this case. 7 But I think it's very - I think it's 8 material to people to know that they're creating the 9 prohibition, that the action being taken includes 10 prohibiting something. That's all. 11 MR. HOBBS: Well, and I - you know, it seems 12 to me that this type of thing has occurred a lot where 13 I think we faced - this issue of whether - you know, 14 when we put into the expression of single subject words 15 like "concerning a prohibition" or "concerning a 16 requirement," you know, I wish I had better examples, 17 it's not - it's not - it really truly isn't clear to 18 a reader - for example, if we say "concerning a 19 requirement that," the reader just would have no idea 20 whether there's an existing requirement that's being 21 modified or a new requirement that's been imposed. 22 And in those circumstance where I think it's 23 really not clear, then, to me, it's better to express a 24 short single subject and then - and then elaborate 25 what it's doing about that, concerning the -</p>	<p style="text-align: right;">Page 37</p> <p>1 voting on. I'm not sure that the title and the 2 submission clause especially tells them they're voting 3 to create a prohibition. 4 So I guess - yeah, I mean, I guess if people 5 aren't willing to fully join me in the revolution, I'm 6 not going to go halfway. This is sort of where I am, I 7 guess. 8 MR. HOBBS: Well, I think it probably ends up 9 being up to Mr. Cartin, as the swing vote here, 10 whatever the preference is. I do want to avoid the 11 i-n-g, but, you know. So that's what I like about 12 this, is at least it's concerning a subject. 13 MR. CARTIN: Right. And I know that the 14 Board - well, two members of the Board earlier didn't 15 include "concerning." 16 And, frankly, you know, if we were going to 17 eliminate "concerning," then I'd probably want to go 18 back and revisit Mr. Grueskin's suggestion about 19 "requiring" instead of this "prohibition" language. 20 But I think - I think given the fact that the 21 proponents have indicated they don't have an objection 22 to it as stated - 23 Is that accurate? 24 MR. GRUESKIN: An objection to this language? 25 MR. CARTIN: Right.</p>

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<p>1 MR. GRUESKIN: You know, I think we're all 2 pretty close. I guess I -- I'm sensitive to 3 Mr. Domenico's point about how best to make it appear 4 to the voters that they are moving the ball as opposed 5 to that this is kind of the general topic for their 6 consideration. 7 And, you know, I don't -- I actually don't 8 know that the supreme court's ever said that that was a 9 substantial enough reason to find a title to be 10 misleading. But I'm -- but I'm sensitive to that for 11 the purposes of making sure that petitions are 12 circulated correctly and that ballots are cast 13 correctly. And so I -- you know, I would be -- I would 14 be fine with, you know, moving that to show action. 15 You know, I'd just remind you that the 16 "prohibition" language actually -- the word "prohibit" 17 doesn't exist in #76. What the measure really does is 18 impose a new requirement that the employer establish 19 just cause before taking the employment action. I 20 mean, obviously the mirror image of that is the 21 prohibition. But even the "prohibition" language is a 22 little bit of an analytical move. 23 So I guess I'd cut back the language 24 "concerning the requirement that the employer first 25 establish just cause before discharging or suspending</p>	<p>1 suspending." 2 MR. CARTIN: Okay. "Before discharging or 3 suspending," strike "of," and then after "employee," 4 strike everything up until the next strike, "unless the 5 employer has first established just cause." That's my 6 motion. 7 MR. HOBBS: Is there any objection to that? 8 We haven't -- if there is, I would like to do a 9 separate -- we haven't done any votes on any of the 10 changes yet, but we could sever this and do a separate 11 vote if there's an objection. 12 MR. DOMENICO: Well, I actually don't have a 13 problem with that particular change. The problem I 14 have is combining that change with eliminating any 15 reference after "in connection therewith" to imposing 16 this requirement or imposing a prohibition, which I 17 think are actually the exact -- flip sides of the exact 18 same coin. 19 I think the prohibition is -- prohibiting you 20 from doing something unless you've already done 21 something is the same thing as requiring you to do the 22 first thing before you do something else. 23 But that said, it's not the change to that 24 that I really object to, it's the change to that 25 combined with eliminating any reference later on to</p>
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<p>1 an employee." I mean, that indicates a change in the 2 status quo, and I think that's where I hear you kind of 3 talking. 4 I'm sorry I didn't really answer your 5 question. I just kind of worsened the situation. 6 MR. CARTIN: Can I amend my motion? 7 MR. HOBBS: Yes, sir. 8 MR. CARTIN: I would amend the language to 9 provide, in line 1, "concerning a requirement that" -- 10 what was the language there, "requirement that --" 11 MR. HOBBS: "An employer" -- 12 MR. CARTIN: -- "an employer" -- 13 MR. HOBBS: -- "first" -- 14 MR. CARTIN: -- "first" -- 15 MR. HOBBS: -- "establish." -- 16 MR. GRUESKIN: First -- I'm just taking the 17 language that you've already got. "That an employer 18 first establish just cause before discharging or 19 suspending an employee." 20 MR. CARTIN: "A requirement that an employer 21 first establish just cause before," strike "prohibition 22 on the," the next three words. What was it, "before 23 the discharge or suspension of an employee," or was 24 it discharge -- 25 MR. GRUESKIN: "Before discharging or</p>	<p>1 imposing this requirement or prohibition. 2 MR. HOBBS: Should we take a separate vote on 3 this proposal? 4 MR. DOMENICO: Well, I guess it depends what 5 the proposal is. 6 MR. HOBBS: Well, Mr. Cartin made that -- 7 made the suggested changes to lines 1 and 2. I guess 8 for the sake of discussion, if we want to do this one 9 separately, I'll second that motion. 10 So, again, I think the effect is just to the 11 expression of the single subject. So that it would 12 read: "Concerning a requirement that an employer first 13 establish just cause before discharging or suspending 14 an employee." 15 MR. DOMENICO: Yeah, I think that's fine as 16 far as it goes. 17 MR. HOBBS: Then all those in favor say aye. 18 Aye. 19 MR. CARTIN: Aye. 20 MR. DOMENICO: Aye. 21 MR. HOBBS: All those opposed no. 22 That motion carries 3-0. 23 And then are there other suggested changes? 24 The other changes that Ms. Gomez has made to the title 25 we could adopt as a separate motion, but I want to</p>

11 (Pages 38 to 41)

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<p>1 first find out if there's other suggested changes. 2 MR. DOMENICO: Maybe -- it probably doesn't 3 make any difference, but I agree with all of the 4 changes except for the one I expressed, which is 5 essentially deleting the language that's on lines 4 and 6 5 on the screen about prohibiting. If we left in 7 something along those lines, I'd be fine with 8 everything else. 9 So I don't know if you want to separate out 10 that -- a motion to delete that clause just so I can be 11 on the record as voting that way. Because otherwise I 12 guess I'm going to have to vote against the entire rest 13 of the changes, which I don't know that it matters or 14 not. But that's where I am. 15 MR. HOBBS: Okay. So let me -- let's see if 16 I've got that right. Let me move then that we delete 17 the language in the staff draft that says "prohibiting 18 the discharge or suspension of an employee by an 19 employer unless the employer has first established just 20 cause." 21 So if I move that, and if there's a second, 22 then I think we could get a recorded vote on that. And 23 I'll move that deletion because I think it now is 24 repetitious for what we've now said is the single 25 subject.</p>	<p>1 I guess I'll go ahead and move the remaining 2 changes to the staff draft that Ms. Gomez has marked on 3 the screen that I think reflect Mr. Grueskin's 4 suggestions as well as at least one other that we -- 5 that there seemed to be a consensus about it. I think 6 it was -- for example, dropping that last clause from 7 the staff draft or anything else that we have marked as 8 changes on the staff draft. I'll move those changes 9 now. 10 MR. CARTIN: Second. 11 MR. HOBBS: Is there any further discussion? 12 If not, all those in favor say aye. 13 Aye. 14 MR. CARTIN: Aye. 15 MR. DOMENICO: Aye. 16 MR. HOBBS: All those opposed no. 17 That motion carries 3-0. 18 Are there any other changes to the staff 19 draft? If not, I'll move that we adopt the staff draft 20 as amended. 21 MR. CARTIN: Second. 22 (Ms. Gomez exits the room.) 23 MR. HOBBS: And let me read that into record. 24 Mr. Domenico is going to take over the controls so that 25 we can see.</p>
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<p>1 MR. CARTIN: A second removing the deletion? 2 MR. HOBBS: Well, just for that one 3 deletion -- 4 MR. CARTIN: Yeah, as it -- 5 MR. HOBBS: -- from the staff -- you know, 6 the original staff draft. 7 MR. CARTIN: You're moving to undelete it, 8 which would be what Mr. Domenico wants to do? 9 MR. HOBBS: I think that's right. At this 10 point we have not yet deleted it from the staff draft. 11 We've marked it -- 12 MR. DOMENICO: So you're moving to delete it, 13 right? 14 MR. HOBBS: That's correct. 15 MR. DOMENICO: And Mr. Cartin has seconded 16 that motion to delete it? 17 MR. HOBBS: That's correct. 18 MR. DOMENICO: All right. 19 MR. HOBBS: Is there any further discussion? 20 If not, all those in favor say aye. 21 Aye. 22 MR. CARTIN: Aye. 23 MR. HOBBS: All those opposed no. 24 MR. DOMENICO: No. 25 MR. HOBBS: That motion carries 2-1.</p>	<p>1 MR. GRUESKIN: Kaboom. 2 MR. DOMENICO: It will all get deleted. 3 Let's see. What do I want to do? She does it a 4 different way. 5 MR. HOBBS: Under where it's final, the far 6 left-hand side the last -- 7 MR. DOMENICO: This isn't good enough? 8 MR. HOBBS: Sorry. That's right. I'm not 9 paying attention that you've already solved the 10 problem. 11 MR. DOMENICO: Well, I don't know. I hope I 12 did. 13 MR. HOBBS: Let's try it out. 14 With those changes then, the staff -- or the 15 title would read as follows: "An amendment to the 16 Colorado constitution concerning a requirement that an 17 employer first establish just cause before discharging 18 or suspending an employee, comma, and, comma, in 19 connection therewith, comma" -- I can't tell if there's 20 a comma there, but I hope there is -- "defining, quote, 21 just cause, end quote, to mean specified types of 22 employee misconduct and substandard job performance, 23 comma, the filing of bankruptcy by the employer, comma, 24 or documented economic circumstances that directly and 25 adversely affect the employer, semicolon, requiring an</p>

12 (Pages 42 to 45)

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<p>1 employer to provide written documentation to an 2 employee who has been discharged or suspended, 3 semicolon, exempting from the just cause requirement 4 business entities that employ fewer than 20 employees, 5 comma, nonprofit organizations that employ fewer than 6 1,000 employees, comma, and governmental entities, 7 semicolon, allowing an employee who believes he was 8 discharged or suspended without just cause to file a 9 civil action in the state – in state district court, 10 semicolon, requiring the court, comma, in its 11 discretion, comma, to award reinstatement in the 12 employee's former job, comma, back wages, comma, 13 damages, comma, or any combination thereof, comma – 14 or semicolon, excuse me, and allowing the court to 15 award attorney's fees to the prevailing party, period," 16 with the same changes to be made in the ballot title 17 and submission clause. 18 I do wonder if we ought to change in line 19 9 – where it says, in the beginning of line 9, if we 20 ought to say "he or she." It says "allowing an 21 employee who believes he was discharged." I'd suggest 22 saying "he or she." 23 MR. DOMENICO: That's what the measure uses, 24 he or she. I don't know what the – I forget what the 25 legislative convention is.</p>	<p>1 circulated, only one would be submitted. 2 MR. HOBBS: Um-hum. Thank you. 3 Then if there's no other discussion as to the 4 motion to adopt, then the title is as amended. All 5 those in favor say aye. 6 Aye. 7 MR. CARTIN: Aye. 8 MR. HOBBS: All those opposed no. 9 MR. DOMENICO: No. 10 MR. HOBBS: That motion carries 2-1. 11 That completes action on #76, and that 12 concludes our agenda for today. The time is 4:36 p.m. 13 Thank you all. 14 (The proceedings were concluded at 4:36 15 p.m. on the 19th day of March, 2008.) 16 17 18 19 20 21 22 23 24 25</p>
<p>Page 47</p> <p>1 MR. HOBBS: I guess I'll move that additional 2 change. Is there a second? 3 MR. CARTIN: Second. 4 MR. HOBBS: All those in favor say aye. 5 Aye. 6 MR. CARTIN: Aye. 7 MR. DOMENICO: Aye. 8 MR. HOBBS: All those opposed no. 9 That motion carries 3-0. 10 So I think we're back to the main motion then 11 to adopt the staff draft with those changes and the 12 same changes in the ballot title and submission clause. 13 MR. DOMENICO: Should we ask the proponents 14 if they plan to circulate both this and G2 or just one 15 or the other as you did with the previous one, just in 16 case we make any reference to that? 17 MR. HOBBS: Although, you know, where we have 18 similar titles sometimes it can be misleading or 19 confusing. Again, I haven't compared them, but just in 20 case the question could arise, it's helpful if the 21 proponents indicate they're only planning to circulate 22 on version. 23 MR. GRUESKIN: Certainly the intent of the 24 proponents is only to circulate on version. I can 25 guarantee you that if there were two versions</p>	

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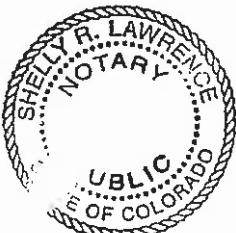
STATE OF COLORADO)
COUNTY OF DENVER)

I, SHELLY R. LAWRENCE, Registered Professional Reporter and Notary Public within and for the State of Colorado, commissioned to administer oaths, do hereby state that the said proceedings were taken in stenotype by me at the time and place aforesaid and was hereafter reduced to typewritten form by me; and that the foregoing is a true and correct transcript of my stenotype notes thereof.

That I am not an attorney nor counsel nor in any way connected with any attorney or counsel for any of the parties to said action, nor otherwise interested in the outcome of this action.

IN WITNESS THEREOF, I have affixed my signature and seal this 24th day of March, 2008.

My commission expires: 03/18/2009.



My Commission Expires 03/18/2009

Shelly R. Lawrence
SHELLY R. LAWRENCE, RPR
Notary Public, State of Colorado

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Exhibits

STATE OF COLORADO
Department of State
1700 Broadway
Suite 270
Denver, CO 80290



Mike Coffman
Secretary of State

Holly Z. Lowder
Director, Elections Division

March 10, 2008

NOTICE OF MEETING

You are hereby notified that the Secretary of State,
Attorney General, and the Director of the Office of Legislative

Legal Services will meet for a hearing

for a proposed initiative concerning

2007 - 2008 #76*

Wednesday, March 19, 2008 at 1:30 p.m.

Secretary of State's Blue Spruce Conference Room

1700 Broadway, Suite 270

Denver, Colorado

You are invited to attend.

Mike Coffman
Secretary of State

AUDIO BROADCASTS NOW AVAILABLE. PLEASE VISIT WWW.SOS.STATE.CO.US AND CLICK ON THE "INFORMATION CENTER".

PROPOSED INITIATIVE TEXT ALSO AVAILABLE ON OUR WEBSITE, LOCATED ON THE INITIATIVE INFORMATION PAGE UNDER "TITLE BOARD FILINGS".

* 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.

Main Number
TDD
Fax

(303) 894-2200
(303) 869-4867
(303) 869-4861

Web Site
E-mail - Elections

www.sos.state.co.us
sos.elections@sos.state.co.us

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MAR 17 2008

ELECTIONS

SECRETARY OF STATE

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

*Proposed Initiative
2007-2008
#76*

FINAL

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) NEGLIGENCE 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
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MAR 07 2008

ELECTIONS
SECRETARY OF STATE
March 7, 2008

6:38 P.M.
D
WK

Mark G. Grueskin
mgrueskin@lr-law.com

Direct Dial
303.256.3941

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

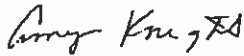
Re: Initiative 2007-08 #76

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
Denver, Colorado 80221
303-429-2191

Larry Ellingson
8517 Bluegrass Circle
Parker, Colorado 80134
720-530-5592

Ballot Title Setting Board

Proposed Initiative 2007-2008 #76¹

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

1 An amendment to the Colorado constitution concerning just cause for action against an
2 employee by an employer, and, in connection therewith; defining "just cause", "employee",
3 "employer", and "governmental entity"; prohibiting the discharge or suspension of an employee
4 by an employer unless the employer has first established just cause; requiring an employer to
5 provide written documentation to an employee who has been discharged or suspended; allowing
6 an employee who believes he was discharged or suspended without just cause to file a civil
7 action; requiring the court, in its discretion, to award reinstatement in the employee's former job,
8 back wages, damages, or any combination thereof; allowing the court to award attorneys fees to
9 the prevailing party; allowing the decision of the district court to be appealed; and authorizing the
10 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:

11 Shall there be an amendment to the Colorado constitution concerning just cause for action
12 against an employee by an employer, and, in connection therewith; defining "just cause",
13 "employee", "employer", and "governmental entity"; prohibiting the discharge or suspension of an
14 employee by an employer unless the employer has first established just cause; requiring an
15 employer to provide written documentation to an employee who has been discharged or
16 suspended; allowing an employee who believes he was discharged or suspended without just
17 cause to file a civil action; requiring the court, in its discretion, to award reinstatement in the
18 employee's former job, back wages, damages, or any combination thereof; allowing the court to
19 award attorneys fees to the prevailing party; allowing the decision of the district court to be
20 appealed; and authorizing the general assembly to enact legislation to facilitate the purposes of
21 this amendment?

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.

INITIATIVE TITLE SETTING REVIEW BOARD
Wednesday, April 2, 2008
Secretary of State's Blue Spruce Conference Room
1700 Broadway, Suite 270
Denver, Colorado

2007-2008 #76
Just Cause for Employee Discharge or Suspension

William A. Hobbs, Deputy Secretary of State
Daniel D. Domenico, Solicitor General
Daniel L. Cartin, Deputy Director of the Office
of Legislative Legal Services
Maurice G. Knaizer, Deputy Attorney General
Cesi Gomez, Secretary of State's Office

A P P E A R A N C E S

For the Proponents: Mark G. Grueskin, Esq.
Isaacson Rosenbaum, P.C.
633 17th Street, Suite 2200
Denver, CO 80202
303.292.5656
mgrueskin@ir-law.com

For the Objectors: Douglas J. Friednash, Esq.
Fairfield and Woods, P.c.
1700 Lincoln Street
Suite 2400
Denver, CO 80203
303.830.2400
dfriednash@fwlaw.com

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1 WHEREUPON, the following proceedings
2 were taken:
3 CHAIRMAN HOBBS: The next agenda
4 item is 2007-2008, No. 76, Just Cause for
5 Employee Discharge or Suspension. This measure
6 is before us on a Motion for Rehearing.
7 Mr. Friednash?
8 MR. FRIEDNASH: Doug Friednash,
9 Fairfield & Woods, appearing on behalf of the
10 objector. It may seem like Ground Hog Day for
11 you, but I feel like Bill Murray in Ground Hog
12 Day, so let me briefly start by referring --
13 incorporating the motion we filed for rehearing
14 and try to move this along accordingly.
15 I think part of the problem is, with
16 respect to single subject, is that it is very,
17 very, very difficult to discern exactly what the
18 single subject of this measure is. The title
19 discusses concerning a requirement that an
20 employer first establish just cause before
21 discharging or suspending an employee.
22 The actual purpose appears to be to
23 repeal the Employment At Will Doctrine and it
24 creates a new standard and defines a just-cause
25 standard in this initiative. Ultimately,

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1 though, what it really does is it creates almost
2 a dual standard of how employers and employees
3 are treated, and it's not captured by the title,
4 but on the one hand, you have a measure that
5 applies to full-time employees who have worked
6 for a private employee -- employer for six or
7 more consecutive months and has more than
8 20 employees.
9 They seem to be covered -- not
10 seem -- they are covered by a different standard
11 than everyone else. Everyone else is exempted
12 out and, when I say, "Everyone else," what we're
13 talking about are, you know, less than a
14 full-time employee, whatever that is, less than
15 six months, fewer than 20 employees.
16 They have a different standard. I'm
17 not sure what all their rights are, if they have
18 a right to contract or not. If you're a labor
19 union with a collective-bargaining agreement
20 that deals with just cause, then you're under a
21 different standard. If you're the government,
22 you're under a different standard, and if you're
23 a nonprofit with fewer than a thousand
24 employees, you're exempted under this, as I
25 understand it, so it creates truly a different

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1 set of rules that apply to different people.
2 Voters, I believe, are going to be
3 surprised by how it affects certain people or
4 whether it affects them or not or how it works
5 and whether you have a right to contract and the
6 fact that it will ultimately treat similarly
7 situated people differently, and that, I think,
8 is the basic single-subject problem that this
9 deals with, and I think it's more ambiguous as a
10 result than what you dealt with in 62.
11 With respect to the title, you know,
12 again, I think the subject's confusing.
13 Somebody pointed out that it doesn't really
14 discuss the action taken. I'll get to that in a
15 second, but it's unclear what this does and who
16 it applies to by reading the title. I think it
17 misleads voters as to who it applies to.
18 It may mislead voters into thinking
19 it applies to many more employers or employees
20 than it really does, and it doesn't convey to
21 voters that they're taking action on creative
22 prohibition. It suggests that the just-cause
23 standard is already Colorado law. It suggests
24 that just-cause standard, I think, is a question
25 of fairness, as opposed to a particular

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1 employment standard.
2 It is unclear and confusing in the
3 sense that it does create a dual standard and
4 who those people that it applies to really are,
5 that you don't know that from what you're voting
6 on, and it's unclear and confusing -- and this
7 is just not a political statement, but a
8 constitutional problem as well.
9 If it, in fact, violates your right
10 to contract, that is a substantive, you know --
11 there are obviously title initiatives and title
12 measures that the Courts have dealt with,
13 substantive changes in fundamental and
14 procedural and constitutional law that are
15 treated as separate subjects, and also, to the
16 extent they're not clearly articulated, they
17 have been found to be prohibited as being
18 misleading and confusing, unclear, and I think
19 it is unclear as to who can contract, whether
20 you can contract or not, and who can contract
21 and how this actually fits, so I just chose
22 those points to amplify what's already in the
23 motion. I'm happy to take any questions.
24 CHAIRMAN HOBBS: Questions for
25 Mr. Friednash?

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1 MR. DOMENICO: I guess I can't quite
2 tell if your argument about the right to
3 contract is just related to the fact that the
4 title's misleading, or are you arguing that
5 that's a separate subject?
6 MR. FRIEDNASH: Both.
7 MR. DOMENICO: Both? So my question
8 is, would you, if this clearly -- if the measure
9 clearly said, "Employees and employers may not
10 enter into agreements that undermine the just-
11 cause problem" or something like that, something
12 that clearly stated you can't contract around
13 this, would that -- I guess my question is: Is
14 your argument that that's unconstitutional
15 because it violates the right to contract?
16 MR. FRIEDNASH: Yes.
17 MR. DOMENICO: Okay. So then it
18 seems to me that, if you're right about that,
19 then we shouldn't really worry about it because,
20 if it's silent on that point, one of the
21 fundamental canons of construction is not to
22 read laws violating the constitution if you can
23 avoid it and, since it's silent, you would read
24 it to not impose an unconstitutional
25 requirement, and so then I'm not worried about

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1 it, since it's not in there.
2 MR. FRIEDNASH: If I can respond --
3 MR. DOMENICO: Sure.
4 MR. FRIEDNASH: -- briefly, I think,
5 when you deal with constitutional issues and a
6 constitutional amendment, which this is -- it's
7 not something that voters can just go fix -- you
8 have to read this and I think, just because it
9 isn't dealt with doesn't mean it's not
10 impacted -- it doesn't have that effect -- and I
11 understand your terms in terms of construction,
12 but I think that is the effect.
13 It says, "Look, if you're already
14 covered by a bona fide collective-bargaining
15 agreement which contains a provision that
16 requires just cause or discharge or suspension
17 from employment, it's okay, but otherwise you
18 can't contract," and I think that is what this
19 says.
20 It doesn't have to have that
21 language in here to basically state you can't
22 contract. It's saying, "If you're a full-time
23 employee, if you've worked for a company for six
24 or more months, and you have 20 or more
25 employees, that this is the law," and we're not

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1 telling people, by the way, that we're repealing
2 the Employment At Will Doctrine for those same
3 people.
4 That's hidden here, so that is the
5 law. For everyone else, you know, you have
6 different sets of standards, but clearly those
7 people can't contract. Everyone else probably
8 can. I think it's implicit in what this
9 actually says.
10 MR. DOMENICO: Wait, who can
11 contract and who can't, as you interpret it?
12 MR. FRIEDNASH: As I interpret it,
13 as you have, if you're a full-time -- employers
14 cannot contract with full-time employees who
15 have worked for six or more months for them and
16 where they have 20 or more employees, you can't
17 contract with employees. Everyone else can.
18 You can contract with, you know,
19 part-time employees, with full-time employees
20 who have been there less, and for all businesses
21 that have under 20 employees, you can contract,
22 but voters are going to be surprised by how this
23 fits together. They're going to be surprised by
24 the way this measure works, which I think is
25 virtually impossible to discern exactly how it

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1 will work and what it exactly means and who it
2 applies to, but that's the basic fundamental
3 problem with this.
4 Before you had a measure that
5 applied to all employers and all employees.
6 Obviously, I'm guessing the unions weren't too
7 thrilled with the fact that it impacted their
8 collective-bargaining agreements and government
9 employees didn't have their due-process rights,
10 but it creates, you know, different standards
11 for different people that voters will be
12 confused about.
13 Again, it tells us employers must
14 first establish just cause before suspending or
15 discharging an employee. That's the title. Not
16 certain employers. Or not the fact that we're
17 prohibiting certain actions. We're not
18 conveying that to the voter. I think these are
19 fundamental problems with this measure and the
20 title.
21 CHAIRMAN HOBBS: Okay.
22 MR. FRIEDNASH: Thanks.
23 CHAIRMAN HOBBS: Thank you.
24 Mr. Grueskin?
25 MR. GRUESKIN: Mark Grueskin

3 (Pages 6 to 9)

1 appearing for the proponents. I'm sensitive to
2 the arguments made by Mr. Friednash. I think
3 they're thoughtful and deserve substantive
4 response, albeit nothing that you haven't
5 already heard. I guess I would say this: Two
6 years ago the voters considered a constitutional
7 amendment to put the minimum wage in the
8 Colorado constitution.

9 Did that deprive employers of the
10 right to contract? I don't think so. It
11 obviously set a standard, but it didn't entirely
12 undermine the right to contract. Mr. Friednash
13 talks about how there will be a dual standard.
14 Well, frankly, thanks to his insights, pointed
15 out that there already is a dual standard when
16 he told me a month ago that there was an issue,
17 at least an implied issue, with the civil
18 service system.

19 You don't have an at-will employment
20 relationship when someone's working for a state
21 or local government. There is a process. There
22 has to be documentation and the like. So what
23 this measure does is it sets up, as opposed to
24 constitutionalizing at will, it simply sets
25 forth certain classes of people that are not --

1 his comment is a good one and a thoughtful one.
2 He also suggests that there's an
3 exception in the measure that isn't addressed in
4 the title for employees covered by a collective-
5 bargaining agreement. I think that's a good
6 comment. I think he's right. I think that the
7 title ought to reflect, because it has other
8 exceptions, that one as well.

9 Now, I'm not positive that the place
10 that I put it or the way that I put it is
11 necessarily the best way to do it because there
12 is -- the first three exceptions apply to
13 employers and then this last one applies to
14 employees to whom this provision doesn't apply
15 because they have their own just-cause
16 collective-bargaining agreement.

17 I toyed with other ways of making it
18 a stand-alone provision or talking about the
19 definition of employee to mimic the text, but I
20 was concerned about brevity, brevity issues, and
21 put it in there at least to reflect my agreement
22 with Mr. Friednash that the title address that
23 and hoping that it prompts conversation with the
24 Board and Mr. Friednash to see whether or not
25 that's the best way.

1 that are subject to the just-cause standard, and
2 I think it's fairly clear -- I think the Board
3 spent a long time on this title -- and I think
4 that it has reflected the thought process that's
5 been discussed at the previous hearing.

6 I would suggest this: As I say, I
7 take Mr. Friednash seriously when he makes his
8 single-subject and his misleading arguments and
9 I think that there are ways to improve this
10 title, and I'd like to suggest to you that there
11 are some things that could be done that might
12 throw light on provisions that will ultimately
13 be deemed to be central to the measures, so I'm
14 going to hand you, if I could, a proposed set of
15 revisions, and then, if you don't mind, I'd walk
16 you through them, unless you need -- I'm going
17 to hit the single-subject issues first, but I
18 think the single-subject issues are pretty
19 thoroughly debated.

20 Let me just run through these:
21 Mr. Friednash argued that it should be clear
22 that it's cutting out full-time employees, and I
23 think that's a good comment. I think that
24 otherwise the suggestion is that somebody who
25 mows your lawn once is subject to it, so I think

1 Finally, the motion, while it only
2 indirectly addresses it, does talk about the
3 remedies issue and, in looking at the remedies
4 section of the title, that one clause beginning
5 with the word "Requiring" currently states
6 that -- or would lead voters to believe that
7 there's a requirement that there be a remedy
8 even if there's not a violation of the standards
9 in the measure, and that, I don't think, was --
10 I know it's not the intent of the measure. It's
11 not what the measure says.

12 The measure is quite explicit that
13 the remedy is conditioned upon actually what the
14 exact text says, quote, "If the discharge or
15 suspension is held to have been wrongful under
16 the provisions of this section, the Court shall,
17 at its discretion, award the employer," and it
18 just seems to me that, when you've embraced
19 using the word "Requiring" -- I think my
20 original word was "Authorizing" -- you, as a
21 connecting point to the earlier clause, made it
22 appear to voters that the mere filing of a civil
23 action results in a revenue, and I think that
24 probably is misleading, and it may not be that
25 this is the optimal language, but I do think

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1 that it reflects the finding that is the
2 necessary precursor to an award, and I've taken
3 out the language relative to the Court's
4 discretion because I think the Court always has
5 discretion that's not a central feature of the
6 measure and, in any event, the final subclause
7 that talks about "Or any combination thereof"
8 makes it pretty clear that the Court has the
9 opportunity to get involved in the formulation
10 of the remedy, so those are comments I'd make
11 and I'd ask you to find it a single subject, as
12 you have before, and I express my appreciation
13 to Mr. Friednash and his client for the
14 substantive comments on the accuracy of the
15 title and hope the Board will make such
16 appropriate provisions.

17 CHAIRMAN HOBBS: Thank you.
18 Any questions for Mr. Grueskin?
19 Thank you.
20 Mr. Friednash, the changes suggested
21 by Mr. Grueskin, are they acceptable to you?
22 MR. FRIEDNASH: Yeah, the
23 "Full-time," I think, is a great addition to
24 this. I think it helps quite a bit. The change
25 "And employees are covered by collective" -- I

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1 think that's a good change. The last one I'm
2 having a hard time with just because, to fully
3 capture what they're trying to do here in the
4 text, you almost need to lift that language
5 verbatim.

6 They talk about wrongful in the
7 context of this section, so that one troubles me
8 a little. I need to give it some thought, but
9 certainly the first two, I think, are definitely
10 a step in the right direction, and, you know,
11 again, real quickly, I know you spent a lot of
12 time in the last initial meeting trying to deal
13 with the first sentence, and I think that
14 obviously is still something that has to be
15 addressed, so I'd just throw that in there.

16 CHAIRMAN HOBBS: Well, in the spirit
17 of Ground Hog Day, it occurs to me that this may
18 be an example of the same old issue of how much
19 do we put in the expression of a single subject.
20 I think, Mr. Friednash, your point is well taken
21 in a way that what we have right now doesn't
22 really tell you what the current law is.

23 I mean, if it's just concerning a
24 requirement, it could be repealing that
25 requirement, that it already exists, or hat it

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1 could be creating a new requirement, and we
2 haven't clearly said that, and I think it goes
3 back to the discussions that we've been having,
4 is that there's a temptation, I think, to expect
5 this single-subject clause to accomplish too
6 much, that we really -- and we've done this a
7 lot.

8 We try to just say what the measure
9 is about, but to signal to the reader what it's
10 doing about that subject, and then we get into
11 this dilemma of, well, if we're going to talk
12 about what it's doing, then wouldn't it be
13 easier -- and using this as an example -- to
14 just say an amendment to the constitution
15 requiring that an employer first establish just
16 cause, and that resolves the problem, and as we
17 start to go down that road, then -- but we start
18 to pack it with more things that seem to be
19 important, like, well, it's just full-time
20 employees, and that's probably relating to my
21 concern that, to the extent that we expect that
22 first clause to be almost sufficient for the
23 reader to know what the major thing is about
24 this measure, it just still troubles me.
25 To me, it would be better -- and

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1 this is the -- and this is the old, traditional
2 approach -- but to say a simple subject that
3 something is about and then more clearly, in the
4 next clause, saying the major thing that it is
5 doing about that subject, and it adds a lot of
6 words.

7 This is not a clear example that I'd
8 like to use because it would be a fair amount of
9 repetition, but it would be concerning, you
10 know, just cause for something and in connection
11 therewith requiring that an employer first
12 establish just cause, you know, and build in
13 whatever is really significant, like full-time
14 employees or whatever, because we've got a lot
15 more -- because there we're saying what it is
16 doing, as opposed to simply what it is about,
17 and, you know, last time I was okay with this
18 because I think it's kind of implied when we say
19 concerning our requirement that an employer
20 first establish just cause.

21 I think the reader probably can, by
22 implication, know that it's requiring just
23 cause, but, you know, the more I think about it,
24 I don't know that that's entirely an inference
25 that everybody will get, and that kind of

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1 troubles me.
2 I think Mr. Domenico would want a
3 simpler approach of this requiring just cause.
4 I think that's simple. It's understandable. It
5 gets us away, I think, from an expression of a
6 subject, in other words, what the measure is
7 about, and I think it leads to that need to say
8 more when you're putting -- depending so much on
9 that first clause to tell the reader what's
10 going on, but I don't know.
11 It's still an issue. It's cumber-
12 some and legalistic and repetitious, but this is
13 a little bit of a dilemma in that -- I agree
14 with you, Mr. Friednash -- it's kind of -- what
15 about that requirement? I mean, we didn't say.
16 MR. DOMENICO: Yeah, I mean, I think
17 I voted against this for that very reason. I
18 think we need to go one direction or the other,
19 either go back to just saying an amendment to
20 the Colorado Constitution concerning -- I would
21 probably avoid using "just cause" just because I
22 think it's a little bit loaded to some extent
23 and just say "concerning cause for discharging
24 or suspending employees in connection therewith"
25 and go into requiring and get pretty specific

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1 about the requirement, or, personally, I think
2 it would be okay just saying, "An amendment to
3 the Colorado Constitution requiring that an
4 employer first establish just cause" and do what
5 we've got there, but make it clear in that first
6 sentence that this measure is doing the
7 requiring.
8 I think this is actually a very good
9 candidate for that approach because, really, in
10 this one, all of the stuff that comes later is
11 related to -- is in connection with that
12 requirement. It's all sort of explanation,
13 exceptions, definitions about that requirement.
14 I think you're right. There will be
15 cases where that won't work. This case -- I
16 think it actually would work pretty well, to do
17 it that way, but I agree. I would rather, if
18 we're not going to do that, I'd rather go back
19 and just say something very simple in the
20 opening and then put the "Requiring" as a verb
21 after the "In connection therewith."
22 CHAIRMAN HOBBS: And, you know, I
23 could live with the simpler approach on this,
24 but I think this is a little bit like No. 74
25 where, on the sake of principle, I prefer to go

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1 the other way, but this is one that is not as
2 troublesome as some because I think we can
3 fairly simply say what it's doing, and, again, I
4 think this is not one that would bother me so
5 much.
6 It's more of the practice that it
7 could lead to, but if we recognize that this one
8 is not so problematic, because it's not an
9 example of one -- we're talking about packing a
10 lot of detail into that opening clause -- then
11 it's certainly something I can live with, and I
12 think, since it does strike me as a lot like
13 No. 74 -- and I was in the minority on that -- I
14 don't want to make a huge issue about that other
15 than the practice that -- the general practice
16 that I've described.
17 Mr. Grueskin?
18 MR. GRUESKIN: Mr. Chairman, I'm not
19 going to put words in his mouth, but I'll let
20 Mr. Friednash speak for himself, but I have been
21 whispering with him and my take-away is that the
22 shorter, briefer clause that the Board
23 originally used would be acceptable to the
24 proponents, and I agree with Mr. Domenico that,
25 rather than having the "In connection therewith"

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1 and going into a definition, you could certainly
2 say something like "Requiring an employer to
3 establish and document the just cause used to
4 justify an employee's discharge or suspension."
5 Something like that is a clause that
6 currently exists on like 5 and 6 and be somewhat
7 modified, but I never really thought I'd get to
8 the point where I'd have a philosophy about
9 single-subject statements, but, I mean, I do
10 think that it is -- it's like -- it's a head-
11 line.
12 It's not supposed to be the whole
13 story. It's supposed to be enough to take your
14 attention as a voter and allow you to be able to
15 identify the measure, and then the rest of the
16 title is backfill, if you will, to provide the
17 necessary details so that there is enough
18 amplification that people know pretty much what
19 the whole measure is, but I think that first
20 clause is just about kind of -- grabbing voters
21 by the lapels, if you will, and saying, "This is
22 what I'm about," and so, you know, the briefer
23 statement and referring to "Cause" rather than
24 "Just cause," I think, works. As I said, I'm
25 not going to put words in Mr. Friednash's mouth.

1 CHAIRMAN HOBBS: Yes, it does
2 certainly matter a lot to me if you guys are
3 agreeing on the approach, either way.

4 MR. FRIEDNASH: I think the way
5 Mr. Domenico first said it made a lot of sense
6 concerning -- I don't remember exactly what he
7 said, but taking out the term "Just cause,"
8 because I think that is loaded, and saying,
9 "Cause" and concerning -- I don't even recall
10 exactly how you said it. She can probably read
11 it back from the record so you would probably
12 know, but that seemed to make sense.

13 MR. DOMENICO: Yeah, there are two
14 ways, I think, we can improve this, and it
15 sounds like you guys are pushing in one
16 direction, and my idea, if we went in that
17 direction, would be, after "Concerning," to
18 simply say, "Concerning cause for the discharge
19 or suspension of employees," and that's it, and
20 then, "In connection therewith," and then we'd
21 have to add a sentence or a clause in there
22 stating that "In connection therewith, requiring
23 that an employer first establish" -- basically
24 what Mr. Grueskin said first, "Require that an
25 employer first establish and document just cause

1 CHAIRMAN HOBBS: If you want to just
2 go ahead and let's do this all together, since
3 these are interconnected.

4 MR. DOMENICO: Sure, however.

5 CHAIRMAN HOBBS: Let's go ahead and
6 see, then, what the next clause would look like.

7 MR. DOMENICO: Sure, so my
8 suggestion would then be to paste that in there
9 and we can fix the grammar. So it would be "In
10 connection therewith, requiring that an employer
11 first establish just cause before discharging or
12 suspending a full-time employee."

13 MS. GOMEZ: Hyphenate the
14 "Full-time"?

15 MR. DOMENICO: Yeah, and then the
16 rest of the suggestions that Mr. Grueskin
17 provided us with; I think adding the part about
18 collective-bargaining agreement is a good idea.
19 I had one small revision to the part about what
20 the Court is supposed to do.

21 CHAIRMAN HOBBS: Should we maybe
22 take this?

23 MR. GRUESKIN: Can I make one quick
24 suggestion, because you verbalized it before,
25 but I think you can save yourself about 15

1 before discharging or suspending a full-time
2 employee," and then basically go into the rest
3 of it. If we're going to go in that direction,
4 that's what I would suggest.

5 CHAIRMAN HOBBS: And I'd certainly
6 be happy about that, of course, but, Mr. Cartin,
7 do you have a preference on which approach we
8 take?

9 MR. CARTIN: No, I have nothing to
10 add, if the proponents are supportive of it.

11 MR. DOMENICO: What if it just said,
12 "Concerning cause for employee discharge or
13 suspension"?

14 CHAIRMAN HOBBS: Sounds good.

15 MR. DOMENICO: Okay, I'll move that
16 we make that the single-subject statement.

17 CHAIRMAN HOBBS: I'll second that.

18 MR. DOMENICO: So then it would
19 delete everything between there and the "In
20 connection therewith."

21 CHAIRMAN HOBBS: Would some of that
22 end up getting --

23 MR. DOMENICO: Yeah, it would
24 probably cut it. Cut "Requirement" all the way
25 through "An employee" on Line 3.

1 words. At the end of Line 6 and on Line 7 it
2 says, "Require an employer to provide written
3 documentation," blah, blah, blah. You could
4 say, "Requiring that an employer first establish
5 and document."

6 MR. DOMENICO: Right, and then get
7 rid of that.

8 CHAIRMAN HOBBS: Okay.

9 MR. DOMENICO: I think, yeah, I'd
10 support that, so delete the line beginning
11 "Requiring an employer" all the way through
12 Line 7.

13 MS. GOMEZ: Delete it?

14 MR. DOMENICO: Yeah, all the way to
15 the end of Line 7, and then adding in Line 3,
16 after "Establish," the words "And document."

17 MS. GOMEZ: Right here?

18 MR. DOMENICO: Correct.

19 So did you want to stop there?

20 CHAIRMAN HOBBS: I think those
21 changes are all interrelated and you made the
22 first motion, which I seconded, but if that's
23 okay with you, then we'll just include all of
24 those changes in that motion.

25 MR. DOMENICO: Yeah, that's my

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1 motion.
2 CHAIRMAN HOBBS: Any further
3 discussion? If not, all those in favor say,
4 "Aye."
5 MR. DOMENICO: Aye.
6 CHAIRMAN HOBBS: Aye.
7 MR. CARTIN: Aye.
8 CHAIRMAN HOBBS: Mr. Grueskin?
9 MR. GRUESKIN: The way it reads,
10 "Requiring that an employer first establish and
11 document just cause before discharging," I mean,
12 you haven't really said, as you had in the
13 earlier title, that it's "Just cause for the
14 discharge and suspension." I suppose your
15 single-subject statement talks about cause for
16 discharge.
17 MR. DOMENICO: Yeah, we got into
18 this business about, didn't we, about before --
19 this had something to do with the idea of this
20 being a prohibition versus something else.
21 MR. GRUESKIN: You inserted the word
22 "First," I think.
23 MR. DOMENICO: Before -- yeah, I
24 mean, well, "First" is actually in the measure,
25 but you could, I think -- yeah, I mean, I

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1 understand your concern.
2 MR. GRUESKIN: Yeah, and mine is not
3 a complaint about the title. I just want to
4 make sure that the word "Before" was the
5 right --
6 MR. DOMENICO: Well, yeah, when you
7 combine it with "Document," the "Document" part
8 is not really part of the first requirement.
9 MR. GRUESKIN: Well, presumably, you
10 would have to document it. Well, I guess to the
11 extent that Subsection 3 is in the past tense,
12 "Who has been discharged."
13 MR. DOMENICO: Right.
14 MR. GRUESKIN: I guess you would
15 technically have the potential as an employer to
16 establish just cause, technically, do the
17 firing, and then --
18 MR. DOMENICO: Yeah, the only way I
19 can think about to address that concern is sort
20 of to rewrite that to say something like
21 "Requiring that an employer establish" -- well,
22 I mean, you could say sort of closer to what the
23 language of the measure says, "Prohibiting an
24 employer from discharging or suspending a
25 full-time employee unless the employer has

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1 established and documented just cause," or
2 "unless the employer can establish just cause,"
3 "establish and document just cause," something
4 like that.
5 I mean, there is this concept in the
6 way it's written that the establishment of just
7 cause has to be first, but I don't really
8 know -- that's not really important, I don't
9 think.
10 MR. FRIEDMAN: You could probably
11 say, "An employer establish and document a just
12 cause for the discharge or suspension of the
13 full-time employee." That should do it.
14 MR. DOMENICO: Yeah, so it would
15 read "Requiring an employer to establish and
16 document just cause," and you could get rid of
17 "Before" just in case that's causing a concern,
18 again, in Line 4 and say, "In order to discharge
19 or suspend a full-time employee."
20 MR. FRIEDNASH: But it's really
21 before. They're just providing --
22 MR. DOMENICO: Oh, so "For the
23 discharge."
24 MR. FRIEDNASH: Yeah, "For the
25 discharge or suspension of a full-time

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1 employee."
2 MR. DOMENICO: Yeah, I think that's
3 good, and that actually reflects the language in
4 the subject clause better too. Well, then we
5 need to get rid of "That" in Line 3, so I think
6 we actually voted on that in previous motions.
7 CHAIRMAN HOBBS: We didn't quite
8 finish the vote.
9 MR. DOMENICO: Okay, I mean, we
10 could either do that or a new motion, so it's up
11 to you.
12 CHAIRMAN HOBBS: Well, with that
13 variation, I'll just restart the vote.
14 All those in favor of those changes
15 say, "Aye."
16 MR. DOMENICO: Aye.
17 CHAIRMAN HOBBS: Aye.
18 MR. CARTIN: Aye.
19 CHAIRMAN HOBBS: All those opposed,
20 "No."
21 That motion is adopted, three to
22 zero.
23 Other changes to the titles?
24 MR. DOMENICO: There's two more that
25 Mr. Grueskin suggested that were at least partly

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1 based on Mr. Friednash's recommendations, which
2 I think are good, to add a mention of the
3 collective-bargaining agreement on Line 10, I
4 guess it is, so I would insert -- delete an
5 "and" before "governmental entities" and insert
6 "and employees who are covered by a collective-
7 bargaining agreement that requires just cause
8 for discharge or suspension."
9 I know there was a mention that
10 there might be some concern because you go from
11 exempting business entities to exempting
12 employees, but I think that grammar conveys
13 what's going on pretty well.
14 CHAIRMAN HOBBS: Is that your
15 motion?
16 MR. DOMENICO: Yeah, I move that we
17 make that change.
18 CHAIRMAN HOBBS: I'll second that.
19 Any further discussion? All those
20 in favor say, "Aye."
21 MR. DOMENICO: Aye.
22 CHAIRMAN HOBBS: Aye.
23 MR. CARTIN: Aye.
24 CHAIRMAN HOBBS: All those opposed,
25 "No."

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1 That motion carries, three to zero.
2 Mr. Domenico?
3 MR. DOMENICO: There's one more
4 change that Mr. Grueskin suggested that I think
5 is a good one. I have one suggestion, which
6 would be -- that's related to that change, which
7 would be -- currently it reads, on Line 12 on
8 the screen, "Requiring the Court," and then it
9 goes on to the language that's being changed.
10 I would just change -- it doesn't
11 actually require the Court to do anything. It
12 allows it to. I would just change it to
13 "Allowing," and then make the changes
14 Mr. Grueskin recommended, which would be the
15 change from "The" to "A Court," and then, after
16 "Court," insert "That finds an employee's
17 discharge or suspension to be wrongful" and then
18 delete "in its discretion."
19 One related thing to consider while
20 we're considering this is Mr. Friednash, I
21 think, said he had some concern about just
22 "wrongful" might be misinterpreted as overly
23 broad. I'm not sure that concerns me all that
24 much, but you could fix that concern, I think,
25 by getting rid of "wrongful" to say just

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1 something like "A Court that finds an employee's
2 discharge or suspension to violate this
3 section," instead of "wrongful," would, I think,
4 be accurate and resolve that, if it's a concern
5 worth resolving.
6 CHAIRMAN HOBBS: I suggest let's go
7 ahead and do that, and Mr. Friednash is nodding
8 he's okay with that.
9 MR. DOMENICO: Okay, yeah, instead
10 of "wrongful," I think I said "to be in
11 violation of this section."
12 MS. GOMEZ: "In violation of this
13 section"?
14 MR. DOMENICO: Oh, yeah, since we're
15 setting the title, yeah, "Amendment" is probably
16 the better way to say it, since we're setting
17 the title, yeah, and then delete that comma
18 right after that. Those are all the thoughts I
19 have.
20 CHAIRMAN HOBBS: So that would read
21 "Allowing a Court that finds an employee's
22 discharge or suspension to be a violation of
23 this amendment."
24 MR. DOMENICO: "In violation,"
25 actually, it says.

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1 CHAIRMAN HOBBS: "In violation of
2 this amendment to award reinstatement," et
3 cetera.
4 MR. GRUESKIN: Mr. Friednash also
5 pointed out to me that, on Line 4, after the
6 insertion of "Full-time employee," you probably
7 need a semi-colon.
8 CHAIRMAN HOBBS: I'll let you just
9 consider that editorial unless there's
10 objection.
11 MR. DOMENICO: No.
12 CHAIRMAN HOBBS: And, Mr. Domenico,
13 is that your motion?
14 MR. DOMENICO: Yeah, I move that we
15 make those changes on 13 and 14.
16 CHAIRMAN HOBBS: I'll second that.
17 All those in favor, please say,
18 "Aye."
19 MR. DOMENICO: Aye.
20 CHAIRMAN HOBBS: Aye.
21 MR. CARTIN: Aye.
22 CHAIRMAN HOBBS: All those opposed,
23 "No."
24 That motion carries, three to zero.
25 Any other changes to the titles? If

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1 not, is there a motion to grant the Motion for
2 Rehearing to the extent the Board has amended
3 the titles and deny the motion in all other
4 respects?
5 MR. DOMENICO: I so move.
6 CHAIRMAN HOBBS: Second.
7 That's been moved and seconded.
8 Is there any further discussion? Do
9 I need to read them, read this into the record?
10 It's all been done on the screen. It looks like
11 Mr. Grueskin and Mr. Friednash are okay with not
12 doing that.
13 MR. GRUESKIN: We would take out the
14 extra space on Line 2 after "Suspension."
15 CHAIRMAN HOBBS: Thank you.
16 Okay, all those in favor of the
17 motion, please say, "Aye."
18 MR. DOMENICO: Aye.
19 CHAIRMAN HOBBS: Aye.
20 MR. CARTIN: Aye.
21 CHAIRMAN HOBBS: All those opposed,
22 "No."
23 That motion carries, three to zero.
24 That completes action on No. 76.
25 The time is 3:43 p.m., and I believe that

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1 completes our agenda and we are adjourned.
2 Thank you.
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2 CERTIFICATION
3
4 I, Mary S. Parker, Registered
5 Professional Reporter, Registered Merit
6 Reporter, and Certified Realtime Reporter,
7 certify that the above proceedings were had;
8 then reduced to typewritten form, by means of
9 computer-aided transcription.
10 I further certify that I am not
11 related to any party herein or their counsel and
12 have no interest in the result of this matter.
13 IN WITNESS WHEREOF, I have hereunto
14 set my hand and seal.
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Mary S. Parker
Registered Professional Reporter
Registered Merit Reporter
Certified Realtime Reporter