

<p>SUPREME COURT, STATE OF COLORADO 2 E. 14th Avenue, Suite 400 Denver, CO 80203</p>	<div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>FILED IN THE SUPREME COURT</p> <div style="border: 1px solid black; padding: 5px; margin: 5px auto; width: 80%;"> <p>MAY 19 2008</p> </div> <p>OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK</p> </div>
<p>ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2007) Appeal from the Ballot Title Setting Board</p>	
<p>IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2007-2008, #76 ("Just Cause for Employee Discharge or Suspension")</p> <p>Petitioner: JOSEPH B. BLAKE, Objector,</p> <p>v.</p> <p>Respondents: JOANNE KING and LARRY ELLINGSON, Proponents,</p> <p>And</p> <p>Title Board: WILLIAM A. HOBBS, DANIEL L. CARTIN, and DANIEL DOMENICO.</p>	
<p>Attorney for Respondents: Mark G. Grueskin Isaacson Rosenbaum P.C. 633 17th Street, Suite 2200 Denver, Colorado 80202 Phone Number: (303) 292-5656 FAX Number: (303) 292-3152 E-mail: mgrueskin@ir-law.com Atty. Reg. #: 14621</p>	<p>Case Number: 08 SA 120</p>
<p>RESPONDENTS' ANSWER BRIEF</p>	

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LEGAL ARGUMENT

On May 16, 2008, this Court issued its decision in the case of *In the Matter of the Title, Ballot Title, and Submission Clause for 2007-08 #62*, Case No. 08SA90 (slip op.). That case dealt with a predecessor initiative to the one before the Court in this matter. In all material respects, the text of Initiative #76 is consistent with that ruling. Further, each single subject concern addressed in Justice Hobbs' dissent – the "mediation" remedy, an implied repeal of the right to access to courts in employments matters, and the implied repeal of provisions in the constitutional civil service system – have been clarified in #76. Slip op. at 3-5 (dissent). Mediation is not a remedy in this measure; a direct right to obtain judicial consideration of the manner of discharge or suspension has replaced it. *See* Proposed Colo. Const., art. XVIII, sec. 13(4) (providing right to file civil action within 180 days of discharge or suspension) (see attached Initiative draft). Further, the measure expressly applies only to nongovernmental employees. *See* Proposed Colo. Const., art. XVIII, sec. 13(2)(b) ("employee" is a person who works at least six consecutive months for a private sector employer), (2)(c) ("employer" excludes any governmental entity) (see attached Initiative draft).


In ballot title matters such as this one, the Court adheres to the rule of *stare decisis*. While not an inflexible or immutable rule, the Court "will not depart from

prior rulings 'for slight or trivial causes.'" *In the Matter of the Title, Ballot Title, and Submission Clause for 1999-2000* # 29, 972 P.2d 257, 262-63 (Colo. 1999); accord *In the Matter of the Title, Ballot Title, and Submission Clause for 2001-02* #43, 46 P.3d 438, 443 (Colo. 2002).

There is no cause for the Court to reverse or depart from its decision announced last week. Therefore, the decision of the Title Board should be affirmed.

Respectfully submitted this 19th day of May, 2008.

ISAACSON ROSENBAUM P.C.

A handwritten signature in black ink, appearing to read "Mark G. Grueskin", written over a horizontal line.

By:

Mark G. Grueskin

ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of May, 2008, a true and correct copy of the foregoing **RESPONDENTS' ANSWER BRIEF** was hand delivered to the following:

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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.