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<p>ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2007) Appeal from the Ballot Title Setting Board</p> <p>Petitioner: JESSICA PECK CORRY, Opponent,</p> <p>v.</p> <p>Respondents: ANDREW PAREDES, CLARA NEVAREZ and MARY PHILLIPS, Proponents,</p> <p>and</p> <p>Title Board: WILLIAM A. HOBBS, DANIEL L. CARTIN, and DANIEL DOMENICO</p>	
<p>Attorney for Petitioners: Melissa Hart, #34345 2260 Clermont Street Denver, CO 80207 Phone No.: (303) 893-8877 E-mail: geminimrh@yahoo.com</p>	<p>Case No. 08SA163</p>
<p>OPENING BRIEF OF RESPONDENT PROPONENTS</p>	

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Mary Phillips, Clara Nevarez and Andrew Paredes ("Respondents"), being registered electors of the State of Colorado, through their undersigned counsel, respectfully submit the following Opening Brief in opposition to the Petition for Review of Final Action of the Ballet Title Setting Board Concerning Proposed Initiative for 2007-2008 #82.

I. STATEMENT OF ISSUES

Petitioner presents three issues for review, all of which are without merit. Initiative #82 contains a single subject, as required by Colo. Const. art. V, § 1(5.5) and § 1-40-106.5, C.R.S. (2007). Moreover, both the initiative itself and the title set for it are clear and straightforward expressions of that single subject.¹ Finally, the title set for Initiative #82 does not conflict with the title previously set for Initiative #31.²

¹ In a telephone communication on Friday, May 23, 2008, counsel for Petitioner informed Respondents' counsel that Petitioner would no longer pursue the single subject challenges in this matter. Respondents nonetheless address them briefly here, as they are still contained in the Notice of Appeal.

² Initiative #31, also known as Amendment 46, will be referred to herein by its initiative number.

II. STATEMENT OF THE CASE

A. Nature of the Case, Course of Proceedings, and Disposition Before the Title Board.

The Title Board conducted its initial public meeting and set a title for proposed Initiative 2007-2008 #82 on April 21, 2008. Petitioner filed a Motion for Rehearing pursuant to § 1-40-107(1), C.R.S. (2007), and the Motion for Rehearing was heard at the next meeting of the Title Board on May 7, 2008. The Board denied the Motion for Rehearing. Petitioner filed their petition for review with this Court on May 15, 2008.

B. Statement of Facts.

Initiative #82 seeks to amend Article II of the Colorado Constitution to add a section providing that "The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. 'Preferential treatment' means adopting quotas or awarding points solely on the basis of race, sex, color, ethnicity, or national origin."

This proclamation is followed by three additional paragraphs providing: 1) that the section shall not be interpreted: a) "as prohibiting action taken to establish or maintain eligibility for any federal program"; or b) "as invalidating or

prohibiting an court-ordered remedy or consent decree in a civil rights case"; and 2) offering a definition of "state" to include "any agency or department of the state, any public institution of higher education, any political subdivision, or any governmental instrumentality of or within the state."

This initiative is similar in many respects to proposed Initiative #61, for which this Court recently directed the Title Board to set a title. *See In re Title, Ballot Title, and Submission Clause for 2007-2008 #61*, 2008 WL 2081574 (No. 08SA89 May 16, 2008).³ Like Initiative #61, the current initiative is intended to offer the voters of Colorado an opportunity to express their commitment to non-discrimination by the state. Initiative #82 serves that end by prohibiting discrimination and preferential treatment and then defining preferential treatment clearly so that voters will know exactly what it is they are voting for.

III. SUMMARY OF THE ARGUMENT

The title set by the Title Board clearly and concisely expressed the single subject of Initiative #82. As that title set forth, the proposed initiative is one "concerning a prohibition against discrimination by the State." The title is

³ In fact, Initiative #82 was originally proposed after the Title Board reversed its decision to set a title for Initiative #61. The proponents of Initiative #61 and Initiative #82 will likely not pursue both measures. As soon as litigation over the titles has come to a close, they will determine which of the two initiatives most clearly and effectively expresses the general purpose they share and pursue that one.

straightforward and understandable. It meets the standards set under C.R.S. § 1-40-106.5(1).

Moreover, the title set for Initiative #82 does not conflict with the title set for Initiative #31. The two titles clearly identify their differences and a voter reading them would certainly be able to distinguish between them and to understand the substance of the distinctions.

IV. ARGUMENT

A. Standard of Review.

The single subject requirements are to be construed liberally so that they do not impose unreasonable restrictions on the initiative process. *In re Title, Ballot Title, and Submission Clause, and Summary for 1997-1998 #74*, 962 P.2d 927, 929 (Colo. 1998); *In re Proposed Initiative on Parental Choice in Education*, 917 P.2d 292, 294 (Colo. 1996). Thus, this Court reviews Title Board actions with considerable deference. *In re Proposed Initiative for 1997-1998 #105*, 961 P.2d 1092, 1097 (Colo. 1998).

B. Initiative #82 Contains a Single, Clear Subject – Non-Discrimination by the State.

This Court has consistently explained that "an initiative violates the single subject requirement when it (1) relates to more than one subject and (2) has a least two distinct and separate purposes." *In re Title, Ballot Title, and Submission*

Clause for 2007-2008 #61, 2008 WL 2081574, *2 (No. 08SA89 May 16, 2008). See also *In re Proposed Initiative for 2005-2006 #55*, 138 P.3d 273, 277 (Colo. 2006); *In re Proposed Initiative on "Public Rights in Waters II,"* 898 P.2d 1076, 1078-79 (Colo. 1995); *In re Proposed Initiative on Petition Procedures*, 900 P.2d 104, 109 (Colo. 1995). This single subject requirement aids in the initiative process by protecting against "the inclusion of 'disconnected and incongruous measures' that have no 'necessary or proper connection.'" *In re Proposed Initiative for 2001-2002 #43*, 46 P. 3d 438, 440 (Colo. 2002) (internal citations omitted) (quoting *In re Breene*, 14 Colo. 401, 404, 2 P. 3, 3 (1890)). See also *In re Proposed Initiative for 1997-1998 #84 & #85*, 961 P.2d 456, 460-61 (Colo. 1998). The single subject requirement is further "intended to 'prevent surreptitious measures ... [so as] to prevent surprise and fraud from being practiced upon voters.'" *In re Proposed Initiative for 2007-2008 #61*, 2008 WL 2081574, at *3 (quoting C.R.S. § 1-40-106.5(1)(e)(II)).

Under these well-established standards, Initiative #82 satisfies the single subject requirement. Initiative #82 contains only one subject – non-discrimination by the state. The inclusion of a definition for the otherwise ambiguous term "preferential treatment" does not, as Petitioner contended before the Title Board, constitute a separate subject, nor is the inclusion of a definition in any way

confusing or "surreptitious," as Petitioner has asserted. Quite to the contrary, by defining "preferential treatment," Initiative #82 seeks to avoid the confusion that might otherwise result from use of a contested term. *Cf. In re Proposed Initiative for 2007-2008 #61*, at 14-15 (noting the "ambiguity" in Initiative #31 "about limitations on its prohibition of discrimination and preferential treatment caused by the failure to express any limitation").

C. The Title Set for Initiative #82 Does Not Conflict with the Title Set for Initiative #31.

C.R.S. § 1-40-106(3)(b) provides that "ballot titles ... shall not conflict with those selected for any petition previously filed for the same election." In its recent opinion directing the Title Board to set a title for proposed Initiative #61, this Court noted that titles conflict "where the titles fail to accurately reflect the distinctions between the two measures, and 'voters comparing the titles ... would [not] be able to distinguish between the two measures.'" *In re Proposed Initiative for 2007-2008 #61*, 2008 WL 2081574, at *5 (quoting *In re Proposed Initiated Constitutional Amendment Concerning the "Fair Treatment II,"* 877 P. 2d 329, 333 (Colo. 1994)). The title set by the Board for Initiative #82 clearly distinguishes it from the title set for Initiative #31. Indeed, the Title Board took care to consider

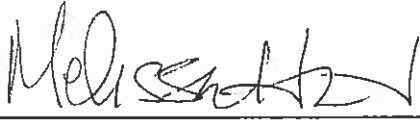
whether the titles conflicted and assured itself that the titles were distinguishable from each other and that voters would be able to understand the differences.

As this Court concluded in its decision on Initiative #61, the mere fact that two initiatives contain the same first clause does not cause them to conflict. *Id.* As long as the titles as a whole are distinguishable, they meet the standards of C.R.S. § 1-40-106(3)(b). The titles set for Initiative #82 and Initiative #31 certainly meet this standard, since "although the first clause of both titles is the same, the subsequent clauses are different." *Id.* Moreover, the difference between the two titles that will be immediately apparent to voters is that Initiative #82 contains an explicit definition of the term "preferential treatment," where Initiative #31 leaves that term entirely undefined. This distinction will be evident to anyone reading beyond the first clause of the two titles, and it ensures that voters will be able to distinguish between the two measures.

V. CONCLUSION

Petitioners respectfully request this Court to uphold the actions of the Title Board in setting a title for Initiative #82.

Respectfully submitted this 28th day of May, 2008.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of May, 2008, a true and correct copy of the foregoing **OPENING BRIEF** was served by hand delivery to the following addressees:

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