

<p>SUPREME COURT, STATE OF COLORADO</p> <p>2 East 14<sup>th</sup> Avenue Denver, CO 80203</p>	<p>FILED IN THE SUPREME COURT</p> <p>JUN - 3 2008</p> <p>OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK</p>
<p>ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2007) Appeal from Ballot Title Board</p>	<p>▲ <b>COURT USE ONLY</b> ▲</p>
<p>IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2007- 2008 #92 ("EMPLOYER RESPONSIBILITY FOR HEALTH INSURANCE") JOSEPH B. BLAKE, OBJECTOR,</p> <p>Petitioner,</p> <p>v.</p> <p>ERNEST DURAN, JR. AND IRENE GOODELL, PROponents; AND WILLIAM A. HOBBS, DANIEL L. CARTIN, AND DANIEL DOMENICO, TITLE BOARD,</p> <p>RESPONDENTS.</p>	<p>Case No.: 08SA178</p>
<p>JOHN W. SUTHERS, Attorney General MAURICE G. KNAIZER, Deputy Attorney General* 1525 Sherman Street, 7<sup>th</sup> Floor Denver, CO 80203 (303) 866-5380 Registration Number: 05264 *Counsel of Record</p>	<p><b>OPENING BRIEF OF TITLE BOARD</b></p>

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William A. Hobbs, Daniel L. Cartin and Daniel Domenico, in their capacities as members of the Title Board (hereinafter “Board”), hereby submit their Opening Brief.

### **STATEMENT OF THE ISSUES**

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

### **STATEMENT OF THE CASE**

On April 25, 2008 the proponents filed Proposed Initiative #92 (#92) with the Secretary of State. The Board held a hearing to set the titles on May 7, 2008. The Board concluded that #92 had a single subject and set a title.

On May 14, 2008, Joseph Blake, the Objector, filed a motion for rehearing. He alleged that #92 contained multiple subjects; that the text of the measure was unclear; that the titles were misleading, incomplete, confusing and inaccurate; and that the titles included a catch phrase.

On May 21, 2008, the Board denied the motion for rehearing. The Objector filed this appeal.

## **STATEMENT OF THE FACTS**

#92, if enacted, would add section 16 to article XVIII § of the Colorado Constitution. The measure mandates that every Colorado employer employing twenty or more employees must provide major medical health care coverage for its employees and their dependents. The provision of health care coverage under the measure would be administered by a Health Insurance Authority. The Authority would be funded by premiums paid to it by employers who do not provide health care coverage directly. The measure further states that an employer will be deemed to provide direct health care coverage if it offers health care coverage through a designated entity. An employee cannot pay more than twenty percent of the cost of coverage for employee and more than thirty percent of the cost of coverage for the employee's dependents.

## **SUMMARY OF THE ARGUMENT**

#92 contains only one subject: provision of health care coverage by employers for their employees. All of the provisions directly relate to this subject.

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

## ARGUMENT

### I. #92 Contains One Subject: Provision of Health Care Coverage by Employers to Their Employees

The Objector contends that the Board should not have set titles because #92 contains more than one subject, thereby violating Colo. Const. art. V, § 1(5.5), which states:

No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in the title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls.

A proposed initiative violates the single subject rule if it “relate[s] to more than one subject and ... [has] at least two distinct and separate purposes which are not dependent upon or connected with each other.” *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2005-2006* #55, 138 P.3d 273, 277 (Colo. 2002)(Colo. 2006) (#55) A proposed initiative that “tends to effect or to carry out one general objective or purpose presents only one subject.” *In re Ballot Title 1999-2000* #25, 974 P.2d 458, 463 (Colo. 1999). The single subject rule both

prevents joinder of multiple subjects to secure the support of various factions and prevents voter fraud and surprise. #55, 138 P.3d at 277 *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-02* #43, 46 P.3d 438, 442 (Colo. 2002)(#43).

The Court will not address the merits of a proposed measure, interpret it or construe its future legal effects. #43, 46 P.3d at 443. . *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000* #258(A), 4 P.3d 1094, 1097-98 (Colo. 2000). The Court may engage in a limited inquiry into the meaning of terms within a proposed measure if necessary to review an allegation that the measure violates the single subject rule. *In re Title, Ballot Title and Submission Clause for 2001-2002* #21 and #22, 44 P.3d, 213, 216 (Colo. 2002). The single subject rule must be liberally construed to avoid unduly restricting the right of initiative. *In re Title, Ballot Title and Submission Clause, and Summary for 1997-98 No. 74*, 962 P.2d 927, 929 (Colo. 1998). Sections of a measure that include “implementation or enforcement details directly tied to the single subject will not, in and of themselves, constitute a single subject.” *Title, Ballot Title and Submission Clause, and Summary for 2005-2006* #73, 135 P.3d 736, 739 (Colo. 2006).

The measure has only one subject: provision of health care by employers to their employees. An employer can provide health care coverage in one of two ways. The employer can provide health care coverage directly by offering health care coverage directly. It may also provide health care coverage through the Health Insurance Authority established by the measure. #92 authorizes the General Assembly to implement the measure by enacting necessary laws.

Objector contends that the measure has five separate subjects: (1) it requires every Colorado employer that employs twenty or more employees to provide major medical health care coverage for its employees or dependents; (2) it establishes a Health Care Authority to provide indirect insurance; (3) it authorizes the Authority to administer the measure; (4) it allows the General Assembly to use other revenues to implement the measure; and (5) it authorizes the General Assembly to implement the measure by passing legislation.

All of the sections cited by Objector do nothing more than define, implement and enforce the measure. The sections of the measure identify who must provide health care coverage, who can receive health care coverage, and the means by which health care coverage will be provided. "All of the measure's sections,



whether definition, implementation, or enforcement, relate to [the] single subject.”

*Blake v. King*, 2008 WL 2167847 (Colo.) (May 23, 2008) \*3

## **II. The Titles Are Fair, Clear And Accurate.**

Section § 1-40-106(3), C.R.S. (2005) establishes the standard for setting titles. It provides:

In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general effect of a “yes” or “no” vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly state the true intent and meaning thereof , together with the ballot title and submission clause, shall be completed within two weeks after the first meeting of the title board...Ballot titles shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and shall be in the form of a question which may be answered “yes” (to vote in favor of the proposed law or constitutional amendment) or “no” (to vote against the proposed law or constitutional amendment) and which shall unambiguously state the principle of the provision sought to be added, amended or repealed.

The titles must be fair, clear, accurate and complete. *In re Title, Ballot Title and Submission Clause and Summary for 1999-00 #256*, 12 P.3d 246, 256 (Colo. 2000) However, the Board is not required to set out every detail. #21, 44 P.3d at 222. In setting titles, the Board may not ascertain the measure’s efficacy, or its

practical or legal effects. #256, 12 P.3d at 257; *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000* #246(e), 8 P.3d 1194, 1197 (Colo. 2000). The Court does not demand that the Board draft the best possible title. #256, at p. 219. The Court grants great deference to the Board in the exercise of its drafting authority. *Id.* The Court will reverse the Board's decision only if the titles are insufficient, unfair or misleading. *In re Proposed Initiative Concerning "Automobile Insurance Coverage"*, 877 P.2d 853, 857 (Colo. 1994).

Objector asserts that the titles are defective because (1) the titles fail to disclose that the term "major medical health care coverage" is not defined; (2) they fail to disclose that the effective date is delayed until the General Assembly enacts legislation; (3) they fail to disclose that the phrase "major medical health coverage" is not defined; (4) they do not disclose that the Authority will administer the law; (5) the titles do not disclose that the scope of the Authority's power must be defined by the General Assembly; (6) they do not disclose that the General Assembly can find a source of revenue to pay for coverage if the premiums provided by employers to the Authority are insufficient; (7) the titles do not explicitly provide that the Authority will administer the program; (8) the titles do

not indicate whether nonprofits are included as employers; and (9) the titles fail to disclose that the State may have some responsibility for financing the measure.

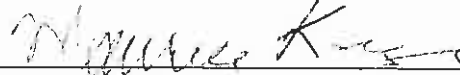
The Court must reject Objector's contentions. Much of Objector's argument is based on the concept that that the titles must state what the measure does not do or include. This argument is without merit. The titles must only set forth what is in the measure. It is not within the Board's purview to set forth what the measure does not do unless the measure specifically includes exceptions, and the exceptions are deemed important.

Objector's remaining allegations are refuted by a simple comparison of the content of the measure with the content of the titles. The titles restate all the key components of the measure.

### **CONCLUSION**

For the reasons state herein, the Court must affirm the Board's action.

JOHN W. SUTHERS  
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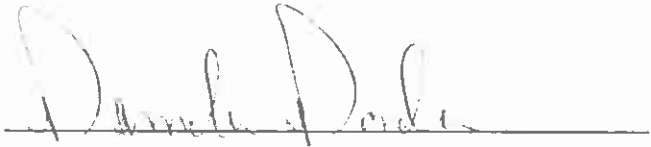
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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **OPENING BRIEF OF TITLE BOARD** upon all parties herein by depositing copies of same overnight by DHL at Denver, Colorado, this 3<sup>rd</sup> day of June 2008 addressed as follows:

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A handwritten signature in cursive script, appearing to read "Daniel D. Decker", is written over a horizontal line.

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KM

Proposed Initiative  
# 92  
Final Text

Be it Enacted by the People of the State of Colorado OF STATE

Article XVIII of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

**Section 16. Employers to provide health care coverage.**

(1) EVERY EMPLOYER IN THE STATE OF COLORADO THAT EMPLOYS TWENTY OR MORE EMPLOYEES SHALL PROVIDE, DIRECTLY OR INDIRECTLY, MAJOR MEDICAL HEALTH CARE COVERAGE, REFERRED TO IN THIS SECTION AS "HEALTH CARE COVERAGE," FOR ITS EMPLOYEES AND THEIR DEPENDENTS.

(2) THE STATE OF COLORADO SHALL ESTABLISH A HEALTH INSURANCE AUTHORITY, REFERRED TO IN THIS SECTION AS THE "AUTHORITY," TO ADMINISTER THE PROVISION OF SUCH HEALTH CARE COVERAGE. EMPLOYERS THAT DO NOT DIRECTLY PROVIDE HEALTH CARE COVERAGE FOR EMPLOYEES AND THEIR DEPENDENTS SHALL PAY PREMIUMS TO THE AUTHORITY, WHICH SHALL NOT PROVIDE SUCH HEALTH CARE COVERAGE ITSELF BUT SHALL HAVE THE POWER TO CONTRACT WITH HEALTH INSURANCE CARRIERS, COMPANIES, AND ORGANIZATIONS TO PROVIDE HEALTH CARE COVERAGE.

(3) THE GENERAL ASSEMBLY SHALL NOT APPROPRIATE MONEYS FROM THE GENERAL FUND TO PAY COSTS OF ADMINISTERING THE AUTHORITY OR COSTS OF THE HEALTH CARE COVERAGE MANDATED BY THIS SECTION. THE AUTHORITY SHALL BE FUNDED BY THE PREMIUMS PAID TO IT BY EMPLOYERS WHO DO NOT PROVIDE HEALTH CARE COVERAGE DIRECTLY, AS DEFINED IN THIS SECTION. THE GENERAL ASSEMBLY SHALL NOT BE PRECLUDED FROM USING OTHER SOURCES OF REVENUE, IF NECESSARY, TO PAY FOR THE COSTS OF ADMINISTERING THE AUTHORITY OR PROVIDING THE HEALTH CARE COVERAGE MANDATED BY THIS SECTION.

(4) AN EMPLOYER SHALL BE DEEMED TO PROVIDE HEALTH CARE COVERAGE "DIRECTLY" BY OFFERING HEALTH CARE COVERAGE IN COMPLIANCE WITH THIS SECTION TO ITS EMPLOYEES THROUGH A HEALTH INSURANCE CARRIER, COMPANY, OR ORGANIZATION OR BY ACTING AS A SELF-INSURER. TO COMPLY WITH THIS SECTION, THE HEALTH CARE COVERAGE OFFERED OR PROVIDED BY THE EMPLOYER SHALL NOT REQUIRE THE EMPLOYEE TO PAY MORE THAN TWENTY PERCENT OF THE PREMIUM COST OF SUCH COVERAGE FOR THE EMPLOYEE AND SHALL NOT REQUIRE THE EMPLOYEE TO PAY MORE THAN THIRTY PERCENT OF THE PREMIUM COST OF COVERAGE FOR DEPENDENTS OF THE EMPLOYEE. IN THE ALTERNATIVE, AN EMPLOYER SHALL PROVIDE HEALTH CARE COVERAGE "INDIRECTLY" BY PAYING PREMIUMS TO THE AUTHORITY IN SUCH AMOUNTS AS ARE DETERMINED BY THE AUTHORITY TO FULFILL THE REQUIREMENTS OF THIS SECTION.

(5) AS USED IN THIS SECTION, "EMPLOYER" MEANS ANY INDIVIDUAL, PERSON, FIRM, PARTNERSHIP, ASSOCIATION, CORPORATION, LIMITED LIABILITY COMPANY, COMPANY, OR OTHER ENTITY THAT REGULARLY EMPLOYS TWENTY OR MORE EMPLOYEES IN THE STATE OF COLORADO, INCLUDING A RECEIVER OR OTHER PERSON ACTING ON BEHALF OF THE EMPLOYER. THE TERM DOES NOT INCLUDE THE STATE OR ANY POLITICAL SUBDIVISION THEREOF.

(6) THE GENERAL ASSEMBLY SHALL ENACT SUCH LAWS AS ARE NECESSARY TO IMPLEMENT THE REQUIREMENT FOR HEALTH CARE COVERAGE PROVIDED IN THIS SECTION; TO DEFINE TERMS THAT

ARE NOT DEFINED IN THIS SECTION, INCLUDING THE REQUIRED COMPONENTS OF HEALTH CARE COVERAGE; AND TO PROVIDE FOR THE ADMINISTRATION OF THE AUTHORITY.

(7) THE EFFECTIVE DATE OF THIS SECTION SHALL BE DELAYED UNTIL THE GENERAL ASSEMBLY HAS AN OPPORTUNITY TO ENACT APPROPRIATE LEGISLATION TO IMPLEMENT THE REQUIREMENTS OF THIS SECTION. THE EFFECTIVE DATE, IN ANY EVENT, SHALL NOT BE DELAYED BEYOND NOVEMBER 1, 2009.

## Ballot Title Setting Board

### Proposed Initiative 2007-2008 #92<sup>1</sup>

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

An amendment to the Colorado Constitution concerning health care coverage for employees, and, in connection therewith, requiring employers that regularly employ twenty or more employees to provide major medical health care coverage to their employees; excluding the state and its political subdivisions from the definition of "employer"; allowing an employer to provide such health care coverage either directly through a carrier, company, or organization or acting as a self-insurer, or indirectly by paying premiums to a health insurance authority to be created pursuant to this measure that will contract with health insurance carriers, companies, and organizations to provide coverage to employees; providing that employees shall not be required to pay more than twenty percent of the premium for such coverage for themselves and more than thirty percent of such coverage for the employees' dependents; financing the costs of administering the health insurance authority and health care coverage provided through the authority with premiums paid by employers to the authority and, if necessary, such revenue sources other than the state general fund as determined by the general assembly; directing the general assembly to enact such laws as are necessary to implement the measure; and setting the effective date of the measure to be no later than November 1, 2009.

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 health care coverage for employees, and, in connection therewith, requiring employers that regularly employ twenty or more employees to provide major medical health care coverage to their employees; excluding the state and its political subdivisions from the definition of "employer"; allowing an employer to provide such health care coverage either directly through a carrier, company, or organization or acting as a self-insurer, or indirectly by paying premiums to a health insurance authority to be created pursuant to this measure that will contract with health insurance carriers, companies, and organizations to provide coverage to employees; providing that employees shall not be required to pay more than twenty percent of the premium for such coverage for themselves and more than thirty percent of such coverage for the employees' dependents; financing the costs of administering the health insurance authority and health care coverage provided through the authority with premiums paid by employers to the authority and, if necessary, such revenue sources other than the state general fund as determined by the general assembly; directing the general assembly to enact such laws as are necessary to implement the measure; and setting the effective date of the measure to be no later than November 1, 2009?

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<sup>1</sup> Unofficially captioned "Employer Responsibility for Health Insurance" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.



*Hearing May 7, 2008:*

*Single subject approved; staff draft amended; titles set.*

*Hearing adjourned 3:21 p.m.*

*Hearing May 21, 2008:*

*Motion for Rehearing denied.*

*Hearing adjourned 2:03 p.m.*