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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, #93

Petitioner:
JOSEPH B. BLAKE,
Objector,

v.

Respondents:
ERNEST DURAN, JR. and BRADLEY JOHNSON
Proponents,

and

Title Board:
WILLIAM A. HOBBS, DANIEL L. CARTIN, and GEOFFREY BLUE.

Attorneys for Petitioner:
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Case No. 08SA180

OBJECTOR'S ANSWER BRIEF TO TITLE BOARD

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I. The Title Board's Claimed "Single Subject" is Too Broad.

The Title Board attempts to save the Initiative by claiming that "providing a safe workplace for employees" is the single subject within the Initiative. It is well-established, however, that taking broad themes under a single subject will not save an Initiative. *In re Proposed Initiative "Public Rights in Waters II,"* 898 P. 2d 1076, 1079 (Colo. 1995). The subject claimed by the Title Board, like "concerning water" in *Waters II* or "restricting non-emergency government services" in *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2005-2006, No. 55,* 138 P.3d 273, 277 (Colo. 2006), is too broad to pass constitutional muster.

In this case, the Title Board itself acknowledges the multiple subjects at page 4 of its brief. It notes that while the first two sections of the Initiative provide an employer must provide a safe workplace (the entirety of its supposed "single subject"), but then it admits a third section that is itself two more subjects: (a) the employees have a cause of action against an employer if the employer violates his duty and (b) the damages collected will be in addition to the awards under the Workers Compensation Act.

These final two subjects—which the Title Board commingles as one—are completely separate from the notion of providing a safe workplace. One can

provide a safe workplace without destroying the exclusivity of the Workers Compensation Act, but that is what the Initiative does.

The destruction of the exclusivity of the Workers Compensation Act does not require "thin parsing" as claimed by the Title Board. To the contrary, this is the primary purpose of the Act. There are already dozens of regulations, requirements, laws, etc. that require a safe workplace. The only purpose of the Initiative is to destroy the exclusivity of the Workers Compensation Act. This is not "a mere speculation" and certainly no deeper analysis than this court performed in *No. 55*.[1]

II. The Title's Failure to Disclose it is Destroying the Exclusivity of the Workers' Compensation Act Makes it Inherently Misleading.

Just last month in *Blake v. King*, --- P.3d ----, 2008 WL 2167847, at 3 (Colo. 2008) this court held:

> Section 1-40-106(3)(b), C.R.S. (2007), provides that "[t]he title for the proposed law or constitutional amendment ... shall correctly and fairly express **the true intent and meaning** thereof...." Accordingly, the titles must be "**fair, clear, and accurate**." *In re Proposed Initiative 1999-2000 # 256,* 12 P.3d 246, 256 (Colo. 2000). This requirement ensures that voters are not surprised after an election to find that an initiative included a surreptitious but significant provision that was disguised by

[1] Although both the Proponents of the Initiative and the Title Board claim the Initiative has a "single subject," their descriptions of that subject in their respective briefs are different. *Compare* Proponents Opening Brief at p. 6 *with* Title Board Opening Brief at p. 4. This proves that it is by no means clear even among supporters what the supposed "single subject" of the Initiative is.

other elements of the proposal. *In re Proposed Initiative 2001-2002 #43,* 46 P.3d at 442.

(Emphases added.)

The true intent of the Initiative is to do away with the exclusivity of the Worker's Compensation Act. Any title that does not disclose this is neither fair, nor clear, nor accurate, much less all three as is required by C.R.S. § 1-40-106(3)(b).

Further, the first workers' compensation legislation in Colorado was passed in 1924—before the vast majority of voters were born. In 1953, it was amended to become the exclusive remedy for an injured worker. *Great Western Sugar Co. v. Erbes*, 148 Colo. 566, 367 P.2d 329 (Colo. 1961) (holding that the Workers' Compensation Act was the exclusive remedy for an injured worker).

Doing away with this exclusivity is a huge change in Colorado public policy. This is not a question of this Court having to determine "potential impact of the measure on the Worker's Compensation Law." Op. Br. p. 6. To the contrary, this is the sole purpose and primary effect of the Initiative. To leave it out of the title is to subject the voters to improper surprise.

Respectfully submitted this 12th day of June, 2008.

FAIRFIELD AND WOODS, P.C.

By: _____

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

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of June, 2008, a true and correct copy of the foregoing **OBJECTOR'S ANSWER BRIEF TO TITLE BOARD** was hand delivered to the following:

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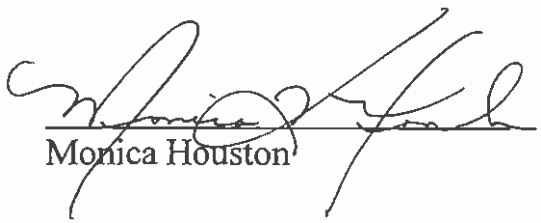

Monica Houston