

Supreme Court, State of Colorado
Colorado State Judicial Building
2 East 14th Avenue, Suite 400
Denver, CO 80203

ORIGINAL PROCEEDING PURSUANT TO
§ 1-40-107(2), C.R.S. (2009)
Appeal from the Ballot Title Setting Board

IN THE MATTER OF THE TITLE, BALLOT
TITLE AND SUBMISSION CLAUSE FOR 2009-
2010 #23

Petitioner: PHILIP HAYES

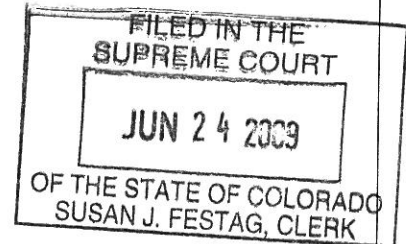
Respondents: HITESH PATEL; and GAIL
LINDLEY

And

Title Board: WILLIAM A HOBBS; and DAN
CARTIN

Attorney:
Mark G. Grueskin
Isaacson Rosenbaum P.C.
633 17th Street, Suite 2200
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▲ COURT USE ONLY ▲

Case Number:

09SA166

**PETITION FOR REVIEW OF FINAL ACTION OF
BALLOT TITLE SETTING BOARD CONCERNING
PROPOSED INITIATIVE 2009-2010 #23**

Petitioner Philip Hayes (hereafter "Petitioner"), a registered elector of the State of Colorado, hereby submits this petition for review to appeal the decision of the State Title Board in setting the title for Proposed Initiative 2009-2010 #23.

STATEMENT OF THE CASE

A. Procedural History of Initiative #23.

Hitesh Patel and Gail Lindley (hereafter "Proponents") proposed Initiative 2009-2010 #23 (hereafter "#23"). A review and comment hearing was held on #23 before designated representatives of the Offices of Legislative Council and Legislative Legal Services to address certain technical and substantive questions dealing with this proposal.

The Proponents submitted a final version of Initiative #23 to the Secretary of State, Exhibit A, and the Title Board held a hearing on June 3, 2009 to establish the initiative's single subject and set a title. On June 10, Petitioner filed a Motion for Rehearing alleging violations of the single subject requirement. Colo. Const., art. V, sec. 1(5.5). At the rehearing on June 17, Petitioner objected to the accuracy of the single subject statement and the accuracy of the ballot title adopted by the Board. In response to the Motion for Rehearing and oral argument, the single subject statement in the ballot title was changed, but in other respects, the Motion was denied.

B. Jurisdiction.

Pursuant to § 1-40-107(2), C.R.S., any person who submits a motion for rehearing to the Title Board or any person who appears before the Board in connection with such motion may appeal the decision on the Title to this Court. Such appeal must contain certified copies of proposed initiative, the motion for rehearing, and the title set, *see* Exhibit A attached hereto, and must be within five days of the Board's decision. That time period excludes a weekend that intervenes between the Board meeting and the expiration of the five-day period. Matter of Title, Ballot Title and Submission Clause, and Summary for 1997-98 #62, 961 P.2d 1077, 1079 (Colo. 1998). Therefore, this appeal is timely filed.

GROUND FOR APPEAL

In violation of §§1-40-106 and -107, C.R.S., the measure violates the single subject requirement. In addition, the title set by the Board is misleading, does not correctly and fairly express the true meaning of the initiative, does not unambiguously state the principle of the provisions to be added to the Constitution, and will lead to voter confusion. The following is an advisory list of issues to be addressed in Petitioners' brief:

1. The initiative addresses multiple subjects by establishing an overarching right to a secret ballot, which does specifically apply to

employee representation elections, but is not otherwise limited in its application to all other elections in which individuals have the right to vote.

2. The ballot title is incorrect, unfair, and misleading in stating its single subject is "the right to vote by secret ballot regarding employee representation" when such constitutional right does not exist under Colorado law and the title does not clarify the inference that it does.
3. The ballot title is incorrect, unfair, and misleading in stating it addresses "the fundamental right of individuals to vote by secret ballot where state or federal law requires elections or designations or authorizations of employee representation" when no such fundamental right exists, although the wording of the title implies that it does.
4. The ballot title is incorrect, unfair, and misleading by purporting to "guarantee" this newly created "fundamental right" when fundamental rights are subject to legislative qualification or limitation and thus are never, in fact, unconditionally guaranteed.


PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the title set for Initiative #23 comprises multiple subjects

and that such title be remanded to the Board with instructions that the measure be returned to Proponents for failure to comply with the single subject requirement or, alternatively, that the title be corrected to accurately and fairly represent the text of the initiative.

Respectfully submitted this 24th day of June, 2009.

ISAACSON ROSENBAUM P.C.

By: 
Mark G. Grueskin

ATTORNEYS FOR PETITIONER

Petitioner's address:

Philip Hayes
5456 S. Ward
Littleton, Colorado 80127

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of June, 2009, a true and correct copy of the foregoing PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2009-2010 #23 was placed in the United States mail, postage prepaid, to the following:

Hitesh Patel
6778 Bronzite Way
Castle Rock, Colorado 80108-7810

Gail Lindley
4545 Grove Street
Denver, Colorado 80211

Scott E. Gessler, Esq.
Hackstaff Gessler LLC
1601 Blake Street, Suite 310
Denver, Colorado 80202

Maurice G. Knaizer, Esq.
Deputy Attorney General
Colorado Department of Law
1525 Sherman Street, 6th Floor
Denver, Colorado 80203





STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **BERNIE BUESCHER**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the text, motion for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2009-2010 #23".....

..... IN TESTIMONY WHEREOF I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 19th day of June, 2009.

A handwritten signature in cursive script, reading "Bernie Buescher", is written over a horizontal line.

SECRETARY OF STATE

EXHIBIT A

*Final Text
#23*

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

SECTION 1. Article XVIII of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

Section 16. Elections for employee representation. THE RIGHT OF INDIVIDUALS TO VOTE BY SECRET BALLOT IS FUNDAMENTAL. WHERE STATE OR FEDERAL LAW REQUIRES ELECTIONS OR DESIGNATIONS OR AUTHORIZATIONS OF EMPLOYEE REPRESENTATION, THE RIGHT OF INDIVIDUALS TO VOTE BY SECRET BALLOT SHALL BE GUARANTEED.

RECEIVED

MAY 22 2009

**ELECTIONS
SECRETARY OF STATE**

*Ch
12:18pm
via email
km*

Hitesh Patel
6778 Bronzite Way
Castle Rock, Colorado 80108-7810

Gail Lindley
4545 Grove Street
Denver, Colorado 80211

RECEIVED

JUN 10 2009

BEFORE THE COLORADO STATE TITLE SETTING BOARD

ELECTIONS
SECRETARY OF STATE

3:48 PM
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Philip Hayes, a registered elector of the State of Colorado,

v.

Hitesh Patel and Gail Lindley, proponents of Initiatives 2009-10 #22, #23, and #24.

**MOTION FOR REHEARING
ON INITIATIVES 2009-10 #22, #23, AND #24**

Comes now, Phillip Hayes, a registered elector of the State of Colorado, by and through his counsel, Isaacson Rosenbaum P.C., to seek a rehearing of the titles and ballot titles and submission clauses ("Title") set for Initiatives 2009-10 #22, #23, and #24 ("Initiatives") by the Title Setting Board ("Board") on June 3, 2009, and in connection therewith, does state:

I. The Initiatives violate the single subject requirement of the Colorado Constitution for reasons that include the following:

A. The plain language of the first sentence of each of the Initiatives covers elections that are required (or, under #22 and #24, required) by law but that are unrelated to employee representation.

B. The reference to the "fundamental right" to a secret ballot is misleading and irrelevant, in light of the "guarantee" language in the measures. As such, it violates C.R.S. 1-45-106.5(1)(d) and appears to have been included for purposes of attracting electoral support.

II. The Titles set for the Initiatives are misleading and inaccurate for reasons that include the following:

A. In the alternative to allegations made under I. above, it is inherently misleading for the Initiatives' titles to refer to the "guarantee" of a "fundamental right" since fundamental rights are never, per se, guaranteed. They can be legislatively qualified, restricted, or even denied to entire classes of persons where the State can demonstrate an adequate justification for doing so, and the title cannot reflect the contrary through the misleading use of the term "guarantee."

B. The title set for Initiative #24 fails to inform voters that the use of a secret ballot in subparagraphs (2) (dealing with public entities) and (3) (addressing non-public entities) is a distinct right from that which is granted under subparagraph (1), because subparagraphs (2) and

(3) relate only to the specific act of actually "choos[ing] representatives," not the "election[], designation[], or authorization of employee representation" as set forth in subparagraph (1).

C. The title set for Initiative #24 fails to inform voters of the atypical and indistinct breadth of the definition of "political subdivision."

D. The title set for Initiative #24 incorrectly states that the "individuals" affected are those "in" an organization.

E. The titles set for Initiative #24 are not limited to "organizations."

By means of this Motion for Rehearing, it is respectfully requested that a rehearing be scheduled for the Board's next meeting on June 17, 2009 and either that the measure be returned to the proponents to cure the defects contained therein or that the ballot title and submission clause be corrected to accurately reflect the measure before voters.

Respectfully submitted this 10th day of June, 2009.

ISAACSON ROSENBAUM P.C.

By: 

Mark G. Grueskin, #14621

633 17th Street, Suite 2200

Denver, Colorado 80202

Phone: (303) 292-5656

Email: mgrueskin@ir-law.com

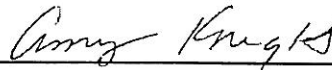
CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of June, 2009, a true and correct copy of the foregoing **MOTION FOR REHEARING ON INITIATIVES 2009-10 #22, #23, AND #24** was served via U.S. mail, postage prepaid, to the following:

Hitesh Patel
6778 Bronzite Way
Castle Rock, Colorado 80108-7810

Gail Lindley
4545 Grove Street
Denver, Colorado 80211

Scott E. Gessler, Esq.
Hackstaff Gessler LLC
1601 Blake Street, Suite 310
Denver, Colorado 80202



Ballot Title Setting Board

Proposed Initiative 2009-2010 #23¹

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

An amendment to the Colorado constitution concerning the right to vote by secret ballot regarding employee representation, and, in connection therewith, guaranteeing the fundamental right of individuals to vote by secret ballot where state or federal law requires elections or designations or authorizations of employee representation.

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 the right to vote by secret ballot regarding employee representation, and, in connection therewith, guaranteeing the fundamental right of individuals to vote by secret ballot where state or federal law requires elections or designations or authorizations of employee representation?

Hearing June 3, 2009:

Board member representing Attorney General recused himself from participation.

Single subject approved; staff draft amended; titles set.

Hearing adjourned 2:43 p.m.

Hearing June 17, 2009:

Motion for Rehearing granted in part to the extent Board amended titles; denied in all other respects.

Hearing adjourned 3:40 p.m.

¹ Unofficially captioned “**Secret Ballot Voting**” by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.