SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue, Denver, CO 80203	FILED IN THE SUPREME COURT JUN 12 2006 OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK
Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2006) Appeal from the Ballot Title Setting Board	
Petitioners: JEAN DUBOFSKY and PATRICK STEADMAN, Objectors **Respondents:** REPRESENTATIVE KEVIN LUNDBERG and WILFRED G. PERKINS, Proponents, and **Title Board:** WILLIAM A. HOBBS, JASON DUNN and SHARON EUBANKS	▲ COURT USE ONLY ▲
Attorneys for Respondents: Michael J. Norton (#6430) BURNS, FIGA & WILL, P.C. 6400 S. Fiddlers Green Circle, Suite 1000 Greenwood Village, CO 80111 Phone Number: 303-796-2626 Glen Lavy, Esq. (Arizona #022922) Alliance Defense Fund 15333 N. Pima Road, Suite 165 Scottsdale, AZ 85260 Phone Number: 480-388-8047	Case No. 06SA172

RESPONSE TO PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2005-2006 #109 ("PROHIBITION ON LEGAL STATUS SIMILAR TO MARRIAGE")

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

CONSTITUTIONAL PROVISIONS

OTHER AUTHORITIES

Introduction

Respondents, Colorado State Representative Kevin Lundberg and Wilfred G. Perkins as proponents of Proposed Initiative 2005-2006 #109 (Prohibition on Legal Status Similar to Marriage) (hereinafter "Proponents"), by and through their undersigned counsel, respectfully submit their Response Brief in opposition to Petitioners Dubofsky and Steadman's (hereinafter "Petitioners") petition for review of the final action of the Initiative Title Setting Review Board (hereinafter "Title Board") with respect to the Proposed Initiative 2005-2006 #109 "Prohibition on Legal Status Similar to Marriage"[1] (hereinafter "Proposed Initiative").

Petitioners' appeal of the Title Board's action has two fatal flaws. The first flaw, sufficient in and of itself to require affirmance of the Title Board action, is that the Petitioners' Motion for Rehearing filed with the Title Board complained about a phrase that is not in the proposed amendment, to wit: the phrase "similar to marriage." (*See* Motion for Rehearing dated May 24, 2006.) In fact, Proposed Initiative 2005-2006 #109 provides as follows: "Neither the state nor any of its political subdivisions may create or recognize a legal status ***similar to that of marriage***, as described in sections 14-2-101 through 14-2-104 Colorado Revised

[1] As noted by the Title Board, "Prohibition on Legal Status Similar to Marriage" is an unofficial caption designated by legislative staff for tracking purposes. The unofficial caption is not part of the title set by the Title Board.

Statutes (2005), from the 'Uniform Marriage Act'." (emphasis added). Similarly, the ballot title designated and fixed by the Board states: "Shall there be an amendment to the Colorado constitution prohibiting the creation or recognition by the state or its political subdivisions of a legal status ***similar to that of marriage*** . . . ?" (emphasis added.)

The significance of this misquote by Petitioners is amplified by the second fatal flaw. Petitioners take the phrase out of context. The context of the phrase is "***legal status*** similar to that of marriage," as defined by current Colorado law, *i.e.*, Sections 14-2-101 through 14-2-104, Colorado Reivsed Statutes (2005). Thus, utilizing standard and ordinary rules of grammar and common usage, the word "that" is a pronoun which is a replacement for the phrase "legal status." If the pronoun were replaced with its antecedent, the phrase about which Petitioners complain would read "similar to the legal status of marriage." Petitioners' Motion for Rehearing did not challenge this language and should, on these bases, be denied.

I. Statement of Issue Presented for Review

Proponents object to Petitioners' description of the issues presented for review. Under the circumstances, the only issue properly before this Court is whether the Title Setting Board abused its discretion in denying Petitioners'

Motion for Rehearing, which Motion for Prehearing was premised upon language that is not used in either Proposed Initiative 2005-2006 #109 or its ballot title as fixed by the Title Board.

II. Nature of the Case and History of Proceedings

Proponents accept Petitioners' description of the actions of the Title Board.

III. Argument

This Court has held that "[i]n reviewing the actions of the [Title] Board, we grant 'great deference to the board's broad discretion in the exercise of its drafting authority.'" *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #265*, 3 P.3d 1210, 1213 (Colo. 2000) (citations omitted). Nevertheless, petitioner may not raise an issue on appeal that was not presented to the Title Board. *Id.* at 1215-16.

Because the Petitioners did not challenge the actual ballot title of the Proposed Initiative as fixed by the Title Board, there is no need for this Court to address whether the ballot title as fixed by the Title Board complies with the single-subject rule or accurately and fairly characterizes the Proposed Initiative.

Nevertheless, Proponents will address those issues in the event that this Court chooses to consider issues not properly raised.

For a substantive review of the Title Board's action under C.R.S. § 1-40-107(2), the Colorado Supreme Court's role "is to determine whether the titles and summary it has adopted: (1) comply with the single-subject requirement for initiatives; and (2) clearly, accurately, and fairly characterize the proposed initiative." *In Re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 200A*, 992 P.2d 27, 30 (Colo. 2000). In reviewing the Title Board's action, the Court does not engage in policy choice or the determination of the "efficacy, construction, or future application" of the initiative. *Id.* *See also* *In re Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 241 (Colo. 1990) ("Neither this court, nor the Board may go beyond ascertaining the intent of the initiative so as to interpret the meaning of the proposed language or suggest how it will be applied if adopted"). The Proposed Initiative contains a single subject, the legal status of marriage, which it limits to the marital relationship described in the "Colorado Uniform Marriage Act" at C.R.S. § 14-2-101 through § 14-2-104 (2005).

By prohibiting the creation or recognition by the state or its political subdivisions of a legal status similar to that (*i.e.*, the "legal status") of marriage, the Proposed Initiative is implementing the single subject purpose and therefore does not violate COLO. CONST. art. V, sec. 1(5.5). Additionally, because the Proposed

Initiative Ballot Titel conveys a clear understanding of a "yes" or "no" vote, it is not misleading and should be resolved in favor of the Title Board's determination. *Armstrong v. Davidson*, 10 P.3d 1278, 1282 (Colo. 2000).

A. Petitioners Failed to Present a Proper Challenge to the Title Board.

The Motion for Rehearing before the Title Board focused on one phrase, to wit: "similar to marriage." Because that phrase is not in the Proposed Initiative language or the Proposed Initiative's Ballot Title, the Title Board properly denied the motion. Indeed, it would have been clear error for the Title Board to grant a motion challenging language that is not in the Proposed Initiative or the Proposed Initiative's Ballot Title.

Because the Motion for Rehearing addressed only a challenge to the phrase, to wit: "similar to marriage" which does not appear in the Proposed Initiative language or the Proposed Initiative's Ballot Title, the only issue properly before this Court is whether the Title Board abused its discretion in rejecting Petitioners' challenge. *See In re 1999-2000 # 265*, 3 P.3d at 1213. Petitioners cannot now change or expand their challenge to make it a challenge to the actual language of the Proposed Initiative or the Proposed Initiative's Ballot Title.

It is well established that a petitioner may not raise an issue on review that was not raised in the Motion for Rehearing or at the rehearing before the Title

Board. *Id.* at 1215-16 ("Because they did not raise the issue before the Board they cannot now urge this contention as a grounds for reversing the Board").

Whether or not this issue of the error in Petitioners' challenge was addressed by the Title Board in the rehearing is immaterial to this Court's review. The rule against raising a new issue to reverse the Title Board does not apply to raising a different reason to affirm. This Court may affirm on any basis supported by the record. *See Compass Bank v. Kone*, No. 04CA1914, __ P.3d __, 2006 WL 74141 at *5 (Colo. App. Jan. 12, 2006).

B. The Ballot Title Contains a Single Subject as a Matter of Law.

1. "Similar to" is a common statutory phrase.

Insomuch as the Colorado Legislature historically uses the phrase "similar to" in its legislative enactments, which enactments have, in general, thereupon been signed into law by the Governor, both the Colorado Legislature and the Executive Branch apparently think that the phrase "similar to" conveys accurate and useful information to the public and others.

A Westlaw search of the words "similar to" in the Colorado Statutes database (co-st) produces 2,112 documents. Most of those documents contain the phrase in historical and statutory notes explaining that a section is "similar to" a former or another statute. However, ninety-three of those documents use "similar

to" in a substantive manner within the body of a statute.[2] It does not appear that any Colorado court has ever ruled that a statute was impermissibly broad, vague, obscure or misleading because of the use of the phrase "similar to." Thus, even if the phrase at issue were "similar to marriage," it would not be improperly vague, broad, obscure, or misleading. As noted above, however, the phrase at issue is not "similar to marriage" as complained of by Petitioners.

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[2] C.R.S. § 2-3-505(2)(d); C.R.S. § 4-2-707(1); C.R.S. § 4-2.5-518(2) (amended 2006); C.R.S. § 4-2.5-527; C.R.S. § 4-3-404(c); C.R.S. § 4-3-405(c); C.R.S. § 6-1-1001(1); C.R.S. § 6-16-104(5); C.R.S. § 6-16-111(1)(c); C.R.S. § 7-50-101(1); C.R.S. § 7-50-102(1); C.R.S. 7-51-101(1); C.R.S. § 7-51-102(1); C.R.S. § 8-12-106(1)(g); C.R.S. § 8-12-107(1)(f); C.R.S. § 8-12-108(1)(m); C.R.S. § 8-15.5-104(1)(a); C.R.S. § 8-73-105(2); C.R.S. § 10-2-701; C.R.S. § 10-2-903(1)(b),(2)(c); C.R.S. § 10-3-118(4)(c)(IV)(e)(I); C.R.S. § 10-4-508.5(1)(a),(2); C.R.S. § 10-4-509(5); C.R.S. § 10-7-607(4)(e)(III)(g); C.R.S. § 10-7-611(5)(f)(X); C.R.S. § 10-8-513(4); C.R.S. § 10-13-103(1)(a); C.R.S. § 10-16-105(7.2)(a); C.R.S. § 10-16-1002(6)(b)(I),(II); C.R.S. § 10-18-105(3); C.R.S. § 10-I9-105; C.R.S. § 10-20-103(13); C.R.S. § 10-20-104(1)(a)(II)(C); C.R.S. § 10-20-108(2)(b); C.R.S. § 10-20-108(3)(c)(III); C.R.S. § 10-20-108(22)(c); C.R.S. § 10-20-110(4); C.R.S. § 11-41-107(2)(h); C.R.S. § 11-48-105(1); C.R.S. § 11-51-201(1); C.R.S. § 11-51-201(9.6)(a); C.R.S. § 11-103-304(1)(b); C.R.S. § 11-104-202(8)(a); C.R.S. § 11-109-306(1)(b); C.R.S. § 11-4-111(2.5); C.R.S. § 11-8-110(2); C.R.S. § 12-22-303(7.5)(a)(I),(II), (20); C.R.S. § 12-28-101(1), (3)(b)(I); C.R.S. § 12-36-116(2); C.R.S. § 12-38.1-106(1)(a); C.R.S. § 12-43-222(1)(t)(IV); C.R.S. § 12-47.1-801(1)(e); C.R.S. § 12-61-403(2)(a)(VII); C.R.S. § 12-64-108(4)(b); C.R.S. § 13-6-212(1); C.R.S. § 13-8-110(3); C.R.S. § 13-9-109(3); C.R.S. § 13-25-120(2); C.R.S. § 14-5-205(c)(2); C.R.S. § 14-10-104(2); C.R.S. § 14-11-101(2); C.R.S. § 15-1.5-119(2); C.R.S. § 18-1.3-203(1)(e); C.R.S. § 18-15-104(4)(a); C.R.S. § 18-18-102(6)(a)(I),(II) (21); C.R.S. § 19-5-103.7(4)(b)(II); C.R.S. § 22-32-128; C.R.S. § 24-50-136(3); C.R.S. § 24-50-504(2)(a); C.R.S. § 24-50-602(1)(a); C.R.S. § 24-60-905; C.R.S. § 24-80-205(1); C.R.S. § 25-5-203(2.5); C.R.S. § 25-7-112(1.5)(b)(II); C.R.S. § 25-16-306(4)(b); C.R.S. § 26-4-120(1); C.R.S. § 26-19-107(3); C.R.S. § 27-10-102(5)(b)(III), (d); C.R.S. § 27-10.5-102(11)(a); C.R.S. § 29-11-201; C.R.S. § 31-4-112; C.R.S. § 31-10-104(5); C.R.S. § 34-1-104.5(2); C.R.S. § 34-33-110(2)(b)(V)(e); C.R.S. § 35-23.5-105(1), (2); C.R.S. § 35-29.5-104(1)(h); C.R.S. § 35-57-113(1)(i); C.R.S. § 35-57.5-113(1)(i); C.R.S. § 35-57.8-107(2)(e); C.R.S. § 37-92-501(4)(a)(III); C.R.S. § 39-5-201(1); C.R.S. § 39-28-302(1); C.R.S. § 42-2-126.5(2)(b).

2. In its context in the Proposed Initiative, the phrase, "similar to" is concrete and clear.

Contrary to the Petitioner's assertion, the Proposed Initiative's Ballot Title does not violate the single-subject requirement or subvert the requirement's purpose. COLO. CONST., art V, sec. 1(5.5); C.R.S. § 1-40-106.5(1)(a). "[A]n initiative that 'tends to effect or to carry out one general object or purpose,' does satisfy the single-subject requirement." *In Re 1999-2000 No. 200A*, 992 P.2d at 30 (quoting *In re "Public Rights in Water II"*, 898 P.2d 1076, 1079 (Colo. 1995)). The purpose of the single-subject requirement is to prevent joining in the "same act disconnected and incongruous measures" and to prevent surprise and fraud from being practiced upon Colorado voters. *In re 1999-2000 No. 200A*, 992 P.2d at 30; C.R.S. § 1-40-106.5(e).

The purpose of the Proposed Initiative is to protect and preserve the historical institution of marriage as defined in sections 14-2-101 through 14-2-104 (2005), the Uniform Marriage Act. The definition of marriage as between one man and one woman is based upon thousands of years of tradition and is rooted in immutable and empirical facts of nature with respect to human reproduction. The Proposed Initiative is intended to apply to any "legal status," partnership, or union

created as a substitute for or counterfeit of traditional marriage, whether formed within the state of Colorado or formed elsewhere.

Thus the Proposed Initiative has one purpose and one purpose only – to preserve the historical institution of marriage by precluding marriage imitations. Nothing in the Ballot Title suggests multiple subjects, and therefore the Title Board's determination should be affirmed. *Armstrong*, 10 P.3d at 1282.

Petitioners erroneously argue that "the phrase, 'similar to marriage'" in the Proposed Initiative Ballot Title violates the single-subject requirement because it is "broad and so vague that it necessarily will mean different things to different voters." (Petition at 2.) The actual language, "legal status similar to that [the legal status] of marriage," is by no means broad and vague. It defies reason and logic to claim that people generally do not have a basic understanding of what the legal status of marriage is. Petitioners have not explained how this language necessarily means different things to different people.

Previously, this Court has held that a marriage initiative which expressly addressed varying forms of valid marriages (common-law marriage, validly licensed marriage) did not violate the single-subject requirement because it furthered the single purpose of defining marriage as between one man and one woman. *In re 1999-2000 #227 and #228*, 3 P.3d 1, 4-5 (Colo. 2000). Though the

phrase "legal status similar to that of marriage" would preclude a variety of marriage counterfeits, such as civil unions, domestic partnerships, life partnerships, etc., the Proposed Initiative is only effectuating one purpose – precluding marriage imitations, regardless of what they are called.

Identical or similar language used by several other states in similar constitutional amendments is evidence of its generally understandable meaning. Constitutional amendments in Arkansas, Kentucky, Louisiana, and Texas utilized language similar to the Proposed Initiative's phrase "legal status similar to that of marriage" in initiatives or legislative proposals that placed this issue before electors of those other states. ARK CONST. amend. 83, § 2; KY. CONST. § 233A; LA. CONST. art. 12, § 15; TEX. CONST. art. 1, § 32.

The ballot question submitted to the electors in Kentucky asked: "Are you in favor of amending the Kentucky Constitution to provide that only a marriage between one man and one woman shall be a marriage in Kentucky, and that a *legal status identical to or similar to marriage* for unmarried individuals shall not be valid or recognized?" 2004 Ky. Acts. ch. 128, § 2. This ballot question was challenged and subsequently upheld as satisfying Kentucky's single-subject requirement. *Wood v. Commonwealth of Kentucky*, Civ. A. No. 04-CI-01537,

2005 WL 1258921 at *6 (Ky. Cir. Ct. May 26, 2005) (applying the single subject rule as required under KY. CONST. § 256).

Similarly, the Louisiana Supreme Court recently upheld the Louisiana constitutional amendment regarding marriage, though it was challenged under the Louisiana single-object requirement of LA. CONST. art 13, § 1(b). *Forum for Equality PAC v. McKeithen*, 893 So.2d 715, 737 (La. 2005). The Louisiana amendment was proposed by the legislature and "submitted to the electors of the state of Louisiana, for their approval or rejection." *Id.* at 717 (citing 2004 La. Acts 926). The Louisiana Supreme Court reversed the district court's declaration that the third sentence of the amendment – "A legal status identical or substantially *similar to that of marriage* for unmarried individuals shall not be valid or recognized" – constituted a separate subject from the other three sentences of the amendment. *Id.* at 728-29 (emphasis added). The Louisiana Supreme Court held that the amendment contained a single plan for protecting marriage, and that the sentence in question was an element implementing the single plan. *Id.* at 736.

The only court that has come to a contrary decision did so in a complete vacuum. *See Citizens for Equal Protection v. Bruning*, 368 F. Supp. 2d 980 (D. Neb. 2005). In an embarrassing decision, the court ruled in part that the Nebraska marriage amendment was unconstitutionally vague because of the phrase "'similar

to' marriage." *Id.* at 995. The ruling was embarrassing because neither "similar to marriage" nor even "similar to" is in the Nebraska amendment. NEB. CONST., art. I, sec. 29.[3] Accordingly, as with Petitioners here, there was no context from which the court could legitimately address the phrase "similar to marriage." Indeed, the issue was never raised in any party's brief. *See* Party Briefs *available at* www.domawatch.com.[4]

The Proposed Initiative utilizes the "similar to that of marriage" language as an implementation of its purpose to eliminate marriage imitations. "Implementation details that are 'directly tied' to the initiative's 'central focus' do not constitute a separate subject." *In Re 1999-2000 No. 200A*, 992 P.2d at 30 (citing *In re Initiative for 1997-98 # 74*, 962 P.2d 927, 928 (Colo. 1998)). The prohibition of the creation or recognition of a legal status similar to that of marriage is the tool by which the Proponents choose to implement their goal of protecting the historical institution of marriage as defined by statute. *See In re 1999-2000 No. 200A*, 992 P.2d at 31 (holding that neither the initiative proponents' motivations nor the initiative's legal effects are to be construed but rather only the

[3] The Nebraska language reads: "Only marriage between a man and a woman shall be valid or recognized in Nebraska. The uniting of two persons of the same sex in a civil union, domestic partnership, or other similar same-sex relationship shall not be valid or recognized in Nebraska." *Id.* Thus, it is clear that "similar" in the Nebraska amendment refers to a relationship similar to a civil union or domestic partnership.

[4] www.domawatch.org/circuitissues/eighthcircuit/citizensforequalprotectionv bruning.html.

effect of the implementation provisions). This implementation detail does not violate the single subject requirement but furthers the goal of the single purpose – the protection of the unique legal status of marriage. By prohibiting the creation or recognition of a legal status similar to that of marriage, the Proposed Initiative is affirming that marriage is a unique legal status that should not be replicated outside the confines of its current statutory definition.

The use and subsequent validation of the "similar to" language by other states and their reviewing courts reflects that the language's use is neither too vague nor overbroad for electors in Colorado to comprehend and answer "yes" or "no" to on Election Day. The Proposed Initiative contains a single subject, the preclusion of marriage imitations, and utilizes the "similar to" language in furtherance of achieving that goal. As such, the court should uphold the Title Board's language as compliant with the single subject requirement of COLO. CONST. art. 5, sec. 1(5.5).

C. The Ballot Title Contains a Single Subject as a Matter of Fact.

"Legal status similar to that of marriage" does not logically relate to more than one subject. "Legal status" refers to extending official or governmental recognition and legal effect to a relationship, and treating two people as a unit because of that relationship. For example, granting benefits to a government

employee because he or she is cohabiting with another person is extending legal status to the relationship; making it illegal to commit a violent act (*i.e.*, domestic violence) against a person with whom one resides or with whom one previously had an intimate relationship does not create or recognize a legal status unless the statute premises the prohibition on a spouse-like relationship. "Similar" is used in its ordinary sense of "like," "much the same," or "resembling." Extending benefits or creating responsibilities because of an intimate relationship would be treating that relationship as "similar" to marriage. But extending benefits to all state employees on an equal basis, or extending certain benefits to all unmarried state employees on an equal basis, would not involve creating or recognizing a legal status similar to that of marriage.

The prohibition of creating or recognizing a legal status similar to that of marriage affirms that marriage is a unique legal status. Although marriage is often spoken of as a contract, it is one of a kind. Unlike private contracts, which generally implicate no public interests, marriage has public consequences because it establishes the fundamental family unit of a stable society. As a result of the public interest in and regulation of marriage, it cannot be dissolved solely by the mutual consent of the parties. The essence of the legal status of marriage is that it involves domestic relations with public ramifications, including public recognition,

licensing, registration, and/or regulation. Thus, a legal status would be "similar to that of marriage" if it involves public recognition, licensing, registration, or regulation of domestic relations.

The Proposed Initiative applies to the government only, not to private parties. A court enforcing a private contract or will of any kind is not recognizing a legal status; it is recognizing a private agreement or instruction. The court would not be enforcing a contract or will because of an intimate relationship, but because the contract or will complied with the legal requirements for the execution and enforcement of such documents.

As is clear from its language, the Proposed Initiative will, if adopted by the people of Colorado, prohibit extending official status to the intimate relationships of unmarried, unrelated adults, such as domestic partnerships or civil unions. Therefore, it would prohibit governmental entities from creating "same-sex marriage," whether called "marriage," domestic partnership, civil union, or some other name.

Any legal status granted to an unmarried couple for the purpose of extending any benefits or rights would violate the Proposed Initiative. For example, both Hawaii and Vermont have adopted reciprocal beneficiary statutes that extend benefits to couples based on the legal status of a reciprocal beneficiary

"relationship." The purpose of the Hawaii scheme is "to extend certain rights and benefits which are presently available only to married couples to couples composed of two individuals who are legally prohibited from marrying under state law." Haw. Rev. Stat. § 572C-1. The purpose of the Vermont scheme is to provide certain benefits, protections and responsibilities "that are granted to spouses" to certain related persons who enter "a consensual reciprocal beneficiaries relationship." Vt. Stat. § 1301(a). Because both of these approaches create a legal status for unmarried couples, and focus on the couple or relationship, they would violate the proposed amendment. In contrast, the reciprocal benefits contract legislation recently proposed in Colorado by Senator Mitchell or other similar legislation would not violate the Proposed Initiative. S.B. 06-166, 56th Gen. Assem., 2d Reg. Sess. (Colo. 2006), http://www.leg.state.co.us/clics2006a/csl.nsf/fsbillcont3/3AA56AE77373E092872570CB005A0AA0?Open&file=166_01.pdf. Senator Mitchell's legislation would simply have created a type of private contract with a set of default rules, available to any two unmarried persons who cannot marry each other. Such a private contract would not constitute a "legal status similar to that of marriage."

D. The Initiative Ballot Title is not Misleading.

The Initiative Ballot Title is not misleading, but rather conveys a clear, general understanding of the effect of an elector's "yes" or "no" vote. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104*, 987 P.2d 249, 254 (Colo. 1999); C.R.S. § 1-40-106(3)(b). The Title Board's determination of a title is upheld where the language repeats the language of the proposed amendment and "expresses the true intent and meaning of the measure." *In re #25A Concerning Hous. Unit Constr. Limits*, 954 P.2d 1063, 1065 (Colo 1998) (quoting *In re Proposed Initiative Concerning "Automobile Insurance Coverage"*, 877 P.2d 853, 857 (Colo. 1994)). As the Title Board determined, the Proposed Initiative's Ballot Title correctly and fairly expresses the intent of the Initiative to protect the historical institution of marriage by prohibiting the creation or recognition of a legal status resembling marriage.

In reviewing Title Board actions, this court grants "great deference to the board's broad discretion in the exercise of its drafting authority." *In re Proposed Ballot Initiative on Parental Rights*, 913 P.2d 1127, 1131 (Colo. 1996) (quoting *In re Proposed Initiative Concerning "State Personnel Sys."*, 691 P.2d 1121, 1125 (Colo. 1984)). This court will only revise an action of the Title Board if it is "clearly misleading." *Id.*

Because the language chosen by the Title Board fairly reflects the intent and meaning of the Proposed Initiative, it is proper and should be upheld. *Id.* The plain meaning of the Proposed Initiative will be presented to the electors through the chosen ballot title. There is no ambiguity in the phrase "legal status similar to that of marriage," as it is intended to reflect the use of "similar to" in its ordinary sense. As mentioned above, similar language was also presented to the electorates in Arkansas, Kentucky, Louisiana, and Texas – reflecting the language's character as unambiguous and straightforward.[5] The Proposed Initiative Ballot Title is not misleading, and therefore the language chosen by the Title Board should be affirmed. *In re #25A Concerning Hous. Unit Constr. Limits*, 954 P.2d at 1065 (citing *In re Workers Comp. Initiative*, 850 P.2d 144, 146 (Colo.1993)).

Respectfully submitted this 12th day of June 2006.

BURNS, FIGA & WILL, P.C.

By: _____
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[5] Indeed, the Arkansas Supreme Court rejected a challenge to the ballot title language, "legal status for unmarried persons which is identical or substantially similar to marital status." *May v. Daniels*, ___ S.W.3d ___, 359 Ark. 100, 2004 WL 2250882 at *4 (Ark. 2004). The Court held that the term "marital status" was not vague or misleading. *Id.* at *5.

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of June 2006, a true and correct copy of the foregoing RESPONSE TO PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2005-2006 #109 ("PROHIBITION ON LEGAL STATUS SIMILAR TO MARRIAGE") was served by hand delivery, to the following:

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