

<p>SUPREME COURT, STATE OF COLORADO Court Address: 2 East 14th Avenue, Denver, Colorado 80203</p> <p>ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2005) Appeal from the Ballot Title Setting Board</p>	<p>FILED IN THE SUPREME COURT</p> <p>JUN 08 2006</p> <p>OF THE STATE OF COLORADO ▲ COURT USE ONLY ▲</p>
<p>IN THE MATTER OF THE TITLE, BALLOT TITLE, AND SUBMISSION CLAUSE FOR 2005-2006, #122 AND 2005-2006, #123</p> <p>Petitioner: NORA BASHIR, Objector,</p> <p>v.</p> <p>Respondents: JOHN C. BERRY and MARY WOODARD, Proponents,</p> <p>and</p> <p>Title Board: WILLIAM A. HOBBS, JASON R. DUNN, and DANIEL L. CARTIN.</p>	<p>Case No. 06SA165</p> <p>(Consolidated with Case No. 06SA166)</p>
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<p style="text-align: center;">BRIEF OF PETITIONER</p>	

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Nora Bashir ("Petitioner"), through her undersigned counsel, respectfully submits the following Brief in support of her Petition for Review of Final Action of the Ballot Title Setting Board Concerning Proposed Initiatives for 2005-2006 #122 ("Government Wage Deductions for Political Purposes") and #123 ("Government Wage Deductions for Political Purposes").

I. STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. The titles, ballot titles, and submission clauses set for proposed Initiatives for 2005-2006 #122 and #123 do not fairly express the true meaning and intent of the proposed statutory (#122) and constitutional (#123) amendments, in that they:

a. omit reference to the specific prohibition against deduction from government employee wages of dues or other moneys to be transferred to a labor organization that the labor organization, rather than the government employer or employee, may then use for a political purpose; and

b. omit reference to the inclusion within the scope of the term "political purpose" of expenditures wholly unrelated to political selection, nomination, election, or appointment processes or other ballot-related matters, but, rather, relating to the official conduct of the business and governmental affairs of public officeholders.

2. The title, ballot title, and submission clause set for proposed Initiative for 2005-2006 #122 does not fairly express the true meaning and intent of the proposed statutory amendment by failing to disclose that it affirmatively authorizes deductions from government employee wages of moneys to be used for non-political purposes.

3. Proposed Initiative for 2005-2006 #123 violates the single subject requirement of Colo. Const. art. V, § 1(5.5) and § 1-40-106.5, C.R.S. (2005), by seeking within a single initiative to enact amendments to both the Colorado Constitution and the Colorado Revised Statutes.

II. STATEMENT OF THE CASE

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

This Original Proceeding is brought pursuant to § 1-40-107(2), C.R.S. (2005), seeking review of the actions of the Ballot Title Setting Board regarding proposed Initiatives for 2005-2006 #122 and #123. The Petitioner is a registered elector who timely submitted a Motion for Rehearing before the Title Board raising the objections presented herein pursuant to § 1-40-107(1), C.R.S. (2005).

The Title Board conducted its initial public meeting and set a title, ballot title, and submission clause for both proposed Initiatives for 2005-2006 #122 and #123 on May 17, 2006. The Petitioner filed Motions for Rehearing regarding both

initiatives on May 24, 2006. The Motions for Rehearing were heard jointly at the next meeting of the Title Board on May 25, 2006. At the rehearing, the Title Board granted in part and denied in part Petitioner's Motions. Petitioner filed her Petitions for Review with this Court on May 30, 2006. The separately-filed petitions regarding proposed Initiative for 2005-2006 #122 (Case No. 06SA165) and proposed Initiative for 2005-2006 #123 (Case No. 06SA166) were consolidated upon Motion of the Petitioner and by Order of this Court dated May 31, 2006.

B. Statement of Facts.

The two initiatives at issue in this case are identical except for the fact that Section 1 of #122 seeks to add a provision to the Colorado Revised Statutes, while Section 1 of #123 seeks to add the same provision to article XXVIII of the Colorado Constitution. Section 2 of both initiatives is a conforming statutory amendment.

Both initiatives would prohibit a state or local government in Colorado from deducting from an employee's wages any amounts to be paid directly or indirectly to candidates, candidate committees, issue committees, political committees, political parties, small donor committees, or any other person or organization

spending or collecting money for a political purpose (or a conduit for any of the aforesaid).

Separately, the initiatives would prohibit a state or local government from deducting from an employee's wages any dues or other moneys to be transferred to a labor organization "that are to be used for a political purpose." In both initiatives, this prohibition is accompanied by an affirmative statement that "[a] state or local government may deduct from wages of its employees dues or other moneys that are not to be used for a political purpose."

"Political purpose" is a new defined term in both initiatives. It includes: (a) influencing or attempting to influence the selection, nomination, election, or appointment of various candidates for public office or presidential electors; (b) influencing or attempting to influence the passage or defeat of a ballot measure; (c) proposing, seeking to qualify for the ballot, or opposing a ballot initiative; or (d) making a contribution, expenditure, independent expenditure, or electioneering communication (as those terms are defined in Colo. Const. art. XXVIII, § 2) or engaging in other "election activity" (defined as voter registration activity during specified time frames, voter identification, get-out-the-vote activity, generic campaign activities, or a public communication that "promotes, attacks, supports or opposes a federal, state or local candidate or ballot measure").

Also included in the definition of "political purpose" is, however, the following: "activity that . . . involves expenditures relating to an office described in subsection (e)(1)¹ which, if incurred by the individual, would be allowable as ordinary and necessary business expenses paid or incurred in carrying on any trade or business."

Both #122 and #123 contain identical enforcement provisions involving mandatory refunds and fines. And both measures (in Section 2) contain a conforming amendment to the separate statute – § 8-9-106, C.R.S. (2005) – that authorizes the use of check-offs by employers from an employee's wages in the custom and practice of deducting and paying union dues.

III. SUMMARY OF THE ARGUMENT

1. The titles, ballot titles, and submission clauses set for both proposed Initiatives for 2005-2006 #122 and #123 do not fairly express the true meaning and intent of the proposed statutory (#122) and constitutional (#123) amendments, in the following respects:

a. both titles omit any reference to the specific prohibition in the text of the initiatives against deduction from government employee wages of dues

¹ The referenced offices are "any federal, state, or local public office or office in a political organization, or the election of presidential or vice-presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed."

or other moneys to be transferred to a labor organization that the labor organization – rather than the government employer or employee – may then use for a political purpose. This prohibition was deemed important and distinct enough to be set forth in a separate subsection of both initiatives, and the undisclosed imposition of a new restriction upon deductions from public employee wages for labor organization dues is a sufficiently critical and distinct component of these initiatives to warrant disclosure in the titles.

b. both titles omit any reference to the inclusion within the scope of the term "political purpose" of expenditures wholly unrelated to political selection, nomination, election, appointment, or other ballot processes, but, rather, relating to the conduct of the official business and governmental affairs of public officeholders. Expenditures of this nature would include, presumably, such things as travel expenses, costs of constituency communications, meals and lodging, and other expenses not necessarily viewed by voters as "political" in nature. While such expenditures by government employees and labor organizations may certainly be regulated, it is important that the voters be apprised of the scope of the measure they are being asked to approve.

2. The title, ballot title, and submission clause set for proposed Initiative for 2005-2006 #122 does not fairly express the true meaning and intent of the

proposed statutory amendment by failing to disclose that the measure, in addition to restricting deductions from government employee wages of moneys to be used for specified "political" purposes, also affirmatively authorizes deductions from government employee wages for non-political purposes. This disclosure was deemed important enough to include in the title to #123 (the constitutional measure), though wholly omitted from the title for the statutory amendment proposed through #122.

3. Proposed Initiative for 2005-2006 #123 violates the single subject requirement of Colo. Const. art. V, § 1(5.5) and § 1-40-106.5, C.R.S. (2005), by seeking within a single initiative to enact amendments to both the Colorado Constitution and the Colorado Revised Statutes. While the statutory amendment is merely conforming in nature, the initiative nevertheless seeks in a single measure to change Colorado law at both a constitutional and statutory level.

IV. ARGUMENT

A. **Omission From the Titles for Both Initiatives of Any Reference to Two Critical Components of the Initiatives.**

The titles, ballot titles, and submission clauses set by the Title Board for both proposed Initiatives for 2005-2006 #122 and #123 fail to apprise the voters of two critical components of each initiative. Titles are required to "fairly express the true meaning and intent of the proposed state law or constitutional amendment" –

§1-40-107(1), C.R.S. (2005) – "enabling informed voter choice." In re Proposed Initiative for 1999-2000 #37, 977 P.2d 845, 846 (Colo. 1999), quoting In re Proposed Initiative for 1999-2000 #29, 972 P.2d 257, 266 (Colo. 1999). Two important components of both initiatives find no reflection in the titles, leaving the voter uninformed as to their presence in the texts and the full effect of a "yes" or "no" vote.

First, while the titles adequately disclose the purpose of both initiatives to prohibit "any deductions by a state or local government from an employee's wages for political purposes," neither title contains any reference to the additional prohibition in both initiatives of wage deductions for dues or other moneys *to be paid to labor organizations* which – wholly separate from the government employer or employee – may *itself* determine to use such funds for "political purposes."

The effect of this textual provision is to constrain the ability of *labor organizations* – not government employers or employees – to use member dues and other funds for defined "political purposes." The titles suggest that the constraints fall only upon government employers and employees. It may be suggested that labor organizations are, in fact, the primary target of these initiatives. The prohibition directed at them was certainly deemed important

enough to be set forth in a separate and focused subsection of both initiatives. The voters are entitled to be informed about the presence of this provision, and a reference in the titles would not have been difficult.

Second, the titles to both initiatives fail to disclose that the term "political purposes" – for the most part defined in such a way as to include electoral or ballot activities or expenditures most voters would readily view as "political" in nature – is expanded by definition to scoop in "expenditures relating to [a selected, appointed, or elected public office] which, if incurred by the individual, would be allowable as ordinary and necessary business expenses paid or incurred in carrying on any trade or business." It is presumed (though not totally clear) that the "individual" referred to is the office-holder, and that this concept is derived at least in part from the definition of the term "exempt function" as relating to organizations qualified as tax exempt under Section 527 of the Internal Revenue Code, 26 U.S.C. § 527(e)(2).

Whatever the source or precise meaning of this provision may be, it does not appear to be related in any way to the normal electoral or ballot processes that voters would naturally view as "political." Rather, it appears to be an effort to incorporate such expenditures as payment of meals, lodging, or travel expenses for an office holder incurred in connection with their official duties, contributions (if

otherwise allowed) to an office account, assistance in funding a constituency, or public communication or hosting a community meeting, purchase – or simply sharing – of a poll or survey of some sort with an office holder that may be of assistance to them in the performance of their official duties, and so forth. Use of government employee – or labor organization – funds to assist public officeholders in the performance of their official duties may certainly be restricted or otherwise regulated, but this is a very different thing from restricting such funds in the context of electoral or ballot activities normally perceived as "political." And the voters should be apprised (at least briefly) in the titles to these initiatives that this is what they are being asked to do.

B. Omission From the Title for Initiative #122 of the Affirmative Authorization of Deductions from Government Employee Wages for Non-Political Purposes.

Both initiatives #122 and #123 contain a provision stating affirmatively that "A state or local government may deduct from the wages of its employees dues or other moneys that are not to be used for a political purpose."

This affirmative authorization of deductions for *non*-"political purposes" was properly deemed important enough by the Title Board to warrant a reference in the title to the proposed constitutional amendment of Initiative #123: "authorizing such deductions for non-political purposes." Yet, any reference was

omitted from the title for Initiative #122. It is presumed the Title Board perceived a distinction between enshrining such an affirmative authorization for governmental employee wage deductions in the Constitution as opposed to including it in a statutory measure. While this distinction is certainly of significance, the effect of this provision even in purely statutory form is of sufficient importance to warrant apprising the voters that it is there. The voters are being asked not only to *restrict* wage deductions for one purpose, but to *affirmatively authorize* them for any other purpose. That is a significant component of both measures.

C. The Single Subject Requirement Pertinent to Initiative #123.

Proposed Initiative #123, unlike #122, seeks to amend within a single measure provisions of both the Colorado Constitution and the Colorado Revised Statutes. The statutory amendment in Section 2 of Initiative #123 is indeed no more than a conforming amendment, assuring that the authorization of union dues "check-offs" in § 8-9-107, C.R.S. (2005), will be subject to the restrictions proposed by way of amendment to Colo. Const. art. XXVIII (though this presumably would be the effect in any event).

While there is no question that the conforming statutory amendment relates to and is connected with the same substantive topic as the balance of the initiative

– In re Proposed Initiatives for 2003-2004 #32 and #33 and 2003-2004 #21 and #22, 76 P.3d 460, 461 (Colo. 2003) – it nevertheless seeks to enact a provision at an entirely different level of legal authority than the balance of the initiative. This Court has cautioned against initiatives that seek to impact provisions with a "separate and independent constitutional basis" – In re Proposed Initiative 1997-1998 #64, 960 P.2d 1192, 1199-1200 (Colo. 1998) – and has found initiatives that attempt to do so in violation of the single subject requirement. Id.

As substantively related as the conforming amendment may be to the rest of the initiative, it nevertheless turns the initiative into an effort to amend simultaneously and within a single measure both the Constitution of the state and the statutory code of the state. Respectfully, the significance of these disparate, yet topic-related, efforts are very different – a difference established by the very nature of a constitutional provision as distinct from a statutory enactment (at all times subject to the Constitution and readily subject to repeal or amendment at the whim of the legislature).

While the present case poses perhaps the most innocuous form of joint-constitutional-and-statutory amendment (indeed one in which the statutory portion is superfluous), one can readily imagine the mischief that can be attempted should this Court allow the meshing of constitutional and statutory provisions in a single

amendment, notwithstanding a relatedness in substantive topic. Voters may well be disposed to amend one level of their basic laws within a particular substantive context, yet concurrently be less disposed to amend the other. They should not be forced to address their Constitution in the same breath as a proposed statute.

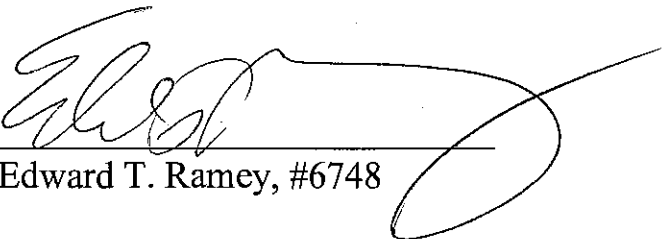
Respectfully, the Court is requested to declare that, consistent with the single subject requirement of Colo. Const. art. V, § 1(5.5), a single proposed initiative may only seek to amend the Constitution, or Colorado's statutory code, but not both together.

V. CONCLUSION

For the reasons set forth above, the Petitioner requests the Court to reverse the actions of the Title Board and to direct the Board to strike the titles, ballot titles, and submission clauses and return proposed Initiatives for 2005-2006 #122 and #123 to their proponents.

Respectfully submitted this 9th day of June, 2006.

ISAACSON ROSENBAUM P.C.

By: 
Edward T. Ramey, #6748

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of June, 2006, a true and correct copy of the foregoing **BRIEF OF PETITIONER** was forwarded, as listed, to the following addressees:

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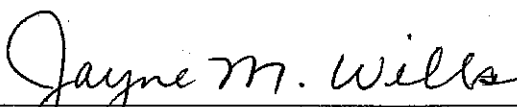
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