



SUPREME COURT, STATE OF COLORADO  
Court Address: 2 East 14th Avenue, Denver,  
Colorado 80203

ORIGINAL PROCEEDING PURSUANT TO  
§ 1-40-107(2), C.R.S. (2005)  
Appeal from the Ballot Title Setting Board

**Petitioner:**  
NORA BASHIR, Objector,

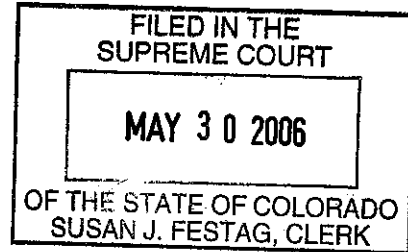
v.

**Respondents:**  
JOHN C. BERRY and MARY WOODARD,  
Proponents,

and

**Title Board:**  
WILLIAM A. HOBBS, JASON R. DUNN, and  
DANIEL L. CARTIN

Attorneys for Petitioners:  
Edward T. Ramey, #6748  
Isaacson Rosenbaum P.C.  
633 17th Street, Suite 2200  
Denver, Colorado 80202  
Phone Number: 303/256-3978  
Fax Number: 303/292-3152  
E-mail: [eramey@ir-law.com](mailto:eramey@ir-law.com)



▲ COURT USE ONLY ▲

Case No.

06SA1654

**PETITION FOR REVIEW OF FINAL ACTION OF  
BALLOT TITLE SETTING BOARD  
CONCERNING PROPOSED INITIATIVE 2005-2006 #122  
("GOVERNMENT WAGE DEDUCTIONS FOR POLITICAL PURPOSES")**

Nora Bashir ("Petitioner"), being a registered elector of the State of Colorado, through her undersigned counsel, respectfully petitions this Court pursuant to § 1-40-107(2), C.R.S. (2005), to review the actions of the Ballot Title Setting Board with respect to the setting of the title, ballot title, and submission clause for proposed Initiative 2005-2006 #122 ("Government Wage Deductions for Political Purposes").

### **I. Actions of the Ballot Title Setting Board**

The Title Board conducted its initial public meeting and set titles for proposed Initiative 2005-2006 #122 on May 17, 2006. The Petitioner filed a Motion for Rehearing pursuant to § 1-40-107(1), C.R.S. (2005), on May 24, 2006. The Motion for Rehearing was heard at the next meeting of the Title Board on May 25, 2006. At the rehearing, the Board granted in part and denied in part Petitioner's Motion. Petitioner hereby seeks review of the final action of the Title Board with regard to proposed Initiative 2005-2006 #122 pursuant to § 1-40-107(2), C.R.S. (2005).

### **II. Issues Presented**

1. Is the title misleading in that it omits reference to the specific prohibition against deductions from government employee wages of dues or other

moneys to be transferred to labor organizations to the extent that such moneys are to be used for political purposes?

2. Is the title misleading in that it does not disclose that the term "political purpose" includes "expenditures relating to an 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" notwithstanding the ordinary understanding of that term?

3. Is the title misleading in that it does not disclose the affirmative authorization of deductions from government employee wages of dues or other moneys that are not to be used for a "political" purpose?

### **III. Supporting Documentation**

As required by § 1-40-107(2), C.R.S. (2005), a certified copy of the Petition, with the titles and submission clause of the proposed statutory amendment, together with a certified copy of the Motion for Rehearing and the rulings thereon, are submitted herewith.

### **IV. Relief Requested**

Petitioners respectfully request this Court to reverse the actions of the Title Board with directions to return the proposed Initiative to the proponents.

Respectfully submitted this 30th day of May, 2006.

ISAACSON ROSENBAUM P.C.

By: 

Edward T. Ramey, #6748

ATTORNEYS FOR PETITIONER

Address of Petitioner:

Nora Bashir  
12470 East Iliff Place  
Aurora, CO 80014

**CERTIFICATE OF SERVICE**

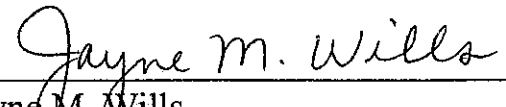
I hereby certify that on this 30th day of May, 2006, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2005-2006 #122 ("GOVERNMENT WAGE DEDUCTIONS FOR POLITICAL PURPOSES")** was placed in the United States mail, postage prepaid, to the following:

John C. Berry  
6457 South Potomac Court  
Centennial, CO 80111

Mary Woodard  
191 University Boulevard, #352  
Denver, CO 80206

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

Maurice G. Knaizer, Esq.  
Deputy Attorney General  
Colorado Department of Law  
1525 Sherman Street, 5th Floor  
Denver, CO 80203

  
\_\_\_\_\_  
Jayne M. Wills



# STATE OF COLORADO

DEPARTMENT OF  
STATE

## CERTIFICATE

I, **GINETTE DENNIS**, 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 "2005-2006 #122"...

.....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 26th day of May, 2006.

*GINETTE DENNIS*

SECRETARY OF STATE

**STATE OF COLORADO**  
**Department of State**  
1700 Broadway  
Suite 270  
Denver, CO 80290

---



**Ginette Dennis**  
Secretary of State  
  
**J. Wayne Munster**  
Acting Director, Elections Division

---

May 23, 2006

**NOTICE OF REHEARING MEETING**

You are hereby notified that the Secretary of State,  
Attorney General, and the Director of the Office of Legislative

Legal Services will meet to consider all

Motions for Rehearing filed by the deadline of

Wednesday, May 24, 2006 at 5:00 p.m.

Meeting will take place on

Thursday, May 25, 2006 at 9:00 a.m.

Secretary of State's Blue Spruce Conference Room

1700 Broadway, Suite 270

Denver, Colorado

You are invited to attend.

**GINETTE DENNIS**  
Secretary of State

**AUDIO BROADCASTS NOW AVAILABLE. PLEASE VISIT [WWW.SOS.STATE.CO.US](http://WWW.SOS.STATE.CO.US) AND CLICK ON THE "INFORMATION CENTER".**

RECEIVED

MAY 24 2006

3/15/06

ELECTIONS / LICENSING  
SECRETARY OF STATE

BALLOT TITLE BOARD

---

MOTION FOR REHEARING

---

IN RE PROPOSED INITIATIVE 2005-2006 #122 ("GOVERNMENT WAGE DEDUCTIONS FOR POLITICAL PURPOSES")

---

Nora Bashir ("Petitioner"), being a registered elector of the State of Colorado, through her undersigned counsel, respectfully submits the following Motion for Rehearing, pursuant to C.R.S. §1-40-107(1), concerning the actions of the Title Board at the hearing on May 17, 2006 regarding Proposed Initiative 2005-2006 #122 ("Government Wage Deductions for Political Purposes"). Petitioner requests a rehearing with regard to the following issues:

1. The title is misleading in that it does not clearly disclose that the prohibitions of deductions from government employee wages of dues or other moneys applies to the use of such moneys for federal and local as well as state political purposes.
2. The title is misleading in that it does not clearly disclose the prohibition of deductions from government employee wages of dues or other moneys to be transferred to labor organizations to the extent that such moneys are to be used for a political purpose.
3. The title is misleading in that it does not clearly disclose that the term "political purpose" includes electioneering communications that may not have the purpose of influencing or attempting to influence the selection, nomination, retention, or appointment of an individual to a public office.
4. The title is misleading in that it does not clearly disclose that the term "political purpose" includes expenditures relating to an office, including an office in a political



organization, that would qualify as an ordinary and necessary business expense if incurred by an individual.

5. The title is misleading in that it does not clearly disclose the affirmative authorization of deductions from government employee wages of dues or other moneys that are not to be used for a political purpose.

6. The title is misleading in that it does not clearly disclose the prohibition of deductions from government employee wages of amounts to be paid directly or indirectly to persons or organizations, other than those specifically enumerated in the title, that spend or collect money for a political purpose.

7. The title is misleading in that it does not disclose that fines paid as a result of violations of the wage deduction prohibitions are to be excluded from revenue and spending figures for purposes of Colo. Const. art. X, § 20(7) and § 20(8).

Respectfully submitted this 24th day of May, 2006.

ISAACSON ROSENBAUM P.C.

By: 

Edward T. Ramey, #6748  
633 17th Street, Suite 2200  
Denver, Colorado 80202  
Telephone: (303) 292-5656  
Facsimile: (303) 292-3152

ATTORNEYS FOR PETITIONER

Petitioner's Address:

Nora Bashir  
12470 East Iliff Place  
Aurora, CO 80014

CERTIFICATE OF SERVICE

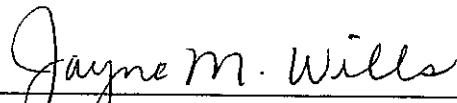
I HEREBY CERTIFY that on this 24th day of May, 2006, a true and correct copy of the foregoing **MOTION FOR REHEARING** was placed in the United States mail, postage prepaid, to the following:

John C. Berry  
6457 South Potomac Court  
Centennial, CO 80111

Mary Woodard  
191 University Boulevard, #352  
Denver, CO 80206

and sent via facsimile to the following:

Scott E. Gessler, Esq.  
Hackstaff Gessler LLC  
Facsimile: (303) 534-4309

  
\_\_\_\_\_  
Jayne M. Wills

RECEIVED

Final Text  
#122

MAY 05 2006

2:01 PM  
JWM

REVISED

ELECTIONS/LICENSING  
SECRETARY OF STATE

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

**SECTION 1.** Part 1 of article 45, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**SECTION 1-45-119. PROHIBITION ON WAGE DEDUCTIONS BY STATE AND LOCAL GOVERNMENTS FOR POLITICAL PURPOSES.**

- (1) THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT STATE AND LOCAL GOVERNMENTS MUST SCRUPULOUSLY AVOID INVOLVEMENT IN POLITICAL ACTIVITIES. FURTHER, STATE AND LOCAL GOVERNMENTS MUST NOT BE USED AS A VEHICLE FOR COLLECTING OR DISTRIBUTING MONEYS THAT ARE USED FOR POLITICAL PURPOSES. STATE AND LOCAL GOVERNMENTS MUST THEREFORE REFRAIN FROM TRANSFERRING ANY EMPLOYEE WAGES TO AN ORGANIZATION OR PERSON THAT MAY USE SUCH MONEYS FOR POLITICAL PURPOSES.
- (2) A STATE OR LOCAL GOVERNMENT SHALL NOT DEDUCT FROM ANY EMPLOYEE WAGES ANY AMOUNTS TO BE PAID, DIRECTLY OR INDIRECTLY, TO:
- (a) A CANDIDATE;
  - (b) A CANDIDATE COMMITTEE;
  - (c) AN ISSUE COMMITTEE;
  - (d) A POLITICAL COMMITTEE;
  - (e) A POLITICAL PARTY;
  - (f) A SMALL DONOR COMMITTEE;
  - (g) A PERSON OR ORGANIZATION THAT SPENDS OR COLLECTS MONEY FOR A POLITICAL PURPOSE; OR
  - (h) A CONDUIT FOR ANY OF THE ABOVE.
- (3) A STATE OR LOCAL GOVERNMENT SHALL NOT DEDUCT FROM THE WAGES OF ANY OF ITS EMPLOYEES ANY PORTION OF DUES OR OTHER MONEYS TO BE TRANSFERRED TO A LABOR ORGANIZATION THAT ARE TO BE USED FOR A POLITICAL PURPOSE. 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.
- (4) NO ORGANIZATION DESCRIBED IN SUBSECTION (2) OF THIS SECTION MAY ACCEPT EMPLOYEE WAGES THAT HAVE BEEN DEDUCTED BY A STATE OR LOCAL GOVERNMENT. NO LABOR ORGANIZATION MAY ACCEPT EMPLOYEE WAGES THAT HAVE BEEN DEDUCTED BY A STATE OR LOCAL GOVERNMENT, IF SUCH WAGES ARE USED FOR A POLITICAL PURPOSE.
- (5) AS USED IN THIS SECTION:
- (a) "CANDIDATE", "CANDIDATE COMMITTEE", "CONTRIBUTION", "ELECTIONEERING COMMUNICATIONS", "EXPENDITURE", "INDEPENDENT EXPENDITURE", "ISSUE COMMITTEE", "PERSON", "POLITICAL COMMITTEE", "POLITICAL PARTY", AND "SMALL DONOR COMMITTEE"

SHALL HAVE THE MEANINGS SET FORTH IN ARTICLE XXVIII, SECTION 2, OF THE COLORADO CONSTITUTION.

(b) "CONDUIT" MEANS A PERSON WHO TRANSMITS MONEYS FROM ANY PERSON OR ENTITY TO ANOTHER PERSON OR ENTITY.

(c) "ELECTION ACTIVITY" MEANS:

(I) VOTER REGISTRATION ACTIVITY DURING THE PERIOD THAT BEGINS ON THE DATE THAT IS ONE HUNDRED TWENTY DAYS BEFORE THE DATE A REGULARLY SCHEDULED STATE OR LOCAL ELECTION IS HELD AND ENDS ON THE DATE OF THE ELECTION;

(II) VOTER IDENTIFICATION, GET-OUT-THE-VOTE ACTIVITY, OR GENERIC CAMPAIGN ACTIVITY CONDUCTED IN CONNECTION WITH A FEDERAL, STATE, OR LOCAL ELECTION;

(III) A PUBLIC COMMUNICATION THAT PROMOTES, ATTACKS, SUPPORTS OR OPPOSES A FEDERAL, STATE OR LOCAL CANDIDATE OR BALLOT MEASURE.

(d) "EMPLOYEE WAGES" MEANS MONEYS DUE TO OR HELD ON BEHALF OF AN EMPLOYEE OR CONSULTANT.

(e) "POLITICAL PURPOSE" MEANS ANY ACTIVITY THAT:

(I) HAS THE PURPOSE OF INFLUENCING OR ATTEMPTING TO INFLUENCE THE SELECTION, NOMINATION, ELECTION, OR APPOINTMENT OF ANY INDIVIDUAL TO 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;

(II) INVOLVES EXPENDITURES RELATING TO AN OFFICE DESCRIBED IN SUBSECTION (e)(I) 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;

(III) HAS THE PURPOSE OF INFLUENCING OR ATTEMPTING TO INFLUENCE THE PASSAGE OR DEFEAT OF A BALLOT MEASURE;

(IV) HAS THE PURPOSE OF PROPOSING A BALLOT INITIATIVE, SEEKING TO QUALIFY A PROPOSED BALLOT INITIATIVE FOR THE BALLOT, OR OPPOSING A PROPOSED BALLOT INITIATIVE; OR

(V) CONSTITUTES A CONTRIBUTION, EXPENDITURE, INDEPENDENT EXPENDITURE, ELECTIONEERING COMMUNICATION OR ELECTION ACTIVITY.

(f) "STATE AND LOCAL GOVERNMENT" MEANS THE STATE OF COLORADO OR ANY AGENCY, DEPARTMENT, BOARD, DIVISION, BUREAU, COMMISSION, OR COUNCIL OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, TO INCLUDE WITHOUT LIMITATION COUNTIES, MUNICIPALITIES, DISTRICTS, AND ENTERPRISES.

(6) **ENFORCEMENT PROVISIONS.** (a) ANY PERSON OR ORGANIZATION THAT VIOLATES ANY PROVISION OF THIS SECTION AND THAT RECEIVES MONEYS DEDUCTED FROM EMPLOYEE WAGES MUST REFUND ALL MONEYS IMPROPERLY DEDUCTED.

(b) ANY STATE OR LOCAL GOVERNMENT OR ANY LABOR ORGANIZATION THAT KNOWINGLY OR INTENTIONALLY VIOLATES ANY PROVISION OF THIS SECTION SHALL BE SUBJECT TO A FINE EQUAL TO THE AMOUNT DEDUCTED FROM ALL EMPLOYEES' WAGES. ALL FINES SHALL BE PAID TO THE SECRETARY OF STATE AND SHALL NOT BE INCLUDED IN OVERALL REVENUE AND SPENDING FIGURES FOR PURPOSES OF ART. X, SECTIONS 20(7) AND 20(8) OF THE COLORADO CONSTITUTION.

(c) THE ATTORNEY GENERAL, SECRETARY OF STATE, OR ANY REGISTERED ELECTOR MAY BRING AN ENFORCEMENT ACTION IN A COURT OF RECORD SEEKING FINES, RESTITUTION OR

INJUNCTIVE RELIEF.

(d) NO ENFORCEMENT ACTION MAY BE BROUGHT MORE THAN TWO YEARS AFTER ANY VIOLATION OF THIS SECTION.

**SECTION 2.** Section 8-9-106, Colorado Revised Statutes, is amended to read:

**§ 8-9-106. Deductions for union dues**

EXCEPT AS PROVIDED IN SECTION 1-45-119, C.R.S., Nothing in this article shall prevent or prohibit the use of the check-off between employers or employees in the custom or practice of the deduction of union dues by an employer for his employees where such an arrangement has been entered into between the parties.

**The two ballot proponents for this measure remain:**

**John C. Berry  
6457 S. Potomac Ct.  
Centennial, CO 80111**

**Mary Woodard  
191 University Blvd., #352  
Denver, CO 80206**

**Ballot Title Setting Board**

**Proposed Initiative 2005-2006 #122<sup>1</sup>**

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

An amendment to the Colorado Revised Statutes concerning a prohibition on wage deductions by governments for political purposes, and, in connection therewith, prohibiting any deductions by a state or local government from an employee's wages for political purposes; requiring refunds of any moneys deducted in violation of this amendment; imposing fines in the case of a knowing or intentional violation; exempting such fines from constitutional revenue and spending limitations; and authorizing enforcement by the state attorney general, secretary of state, or any registered elector.

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

Shall there be an amendment to the Colorado Revised Statutes concerning a prohibition on wage deductions by governments for political purposes, and, in connection therewith, prohibiting any deductions by a state or local government from an employee's wages for political purposes; requiring refunds of any moneys deducted in violation of this amendment; imposing fines in the case of a knowing or intentional violation; exempting such fines from constitutional revenue and spending limitations; and authorizing enforcement by the state attorney general, secretary of state, or any registered elector?

*Hearing May 17, 2006:*

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

*Hearing adjourned 12:03 p.m.*

*Hearing May 25, 2006:*

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

*Hearing adjourned 11:50 a.m.*

---

<sup>1</sup> Unofficially captioned "Government Wage Deductions for Political Purposes" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

**SUPREME COURT, STATE OF COLORADO**

2 East 14<sup>th</sup> Avenue  
Denver, CO 80203

**ORIGINAL PROCEEDING PURSUANT TO  
§ 1-40-107(2), 1 C.R.S. (2005)  
Appeal from the Ballot Title Setting Board**

**IN THE MATTER OF THE TITLE, BALLOT  
TITLE AND SUBMISSION CLAUSE, AND  
SUMMARY FOR 2005-2006, #122  
NORA BASHIR, OBJECTOR,**

Petitioner

v.

**JOHN C. BERRY AND MARY WOODARD,  
PROPONENTS,**

Respondents,  
and

**WILLIAM A. HOBBS, JASON R. DUNN, AND  
DANIEL L. CARTIN,**

Title Board

**JOHN W. SUTHERS, Attorney General  
MAURICE G. KNAIZER, Deputy Attorney  
General\***

1525 Sherman Street, 5<sup>th</sup> Floor  
Denver, CO 80203  
303-866-5380

Registration Number: 05264

\*Counsel of Record

FILED IN THE  
SUPREME COURT

**JUN 09 2006**

OF THE STATE OF COLORADO  
SUSAN J. FESTAG, CLERK

**▲ COURT USE ONLY ▲**

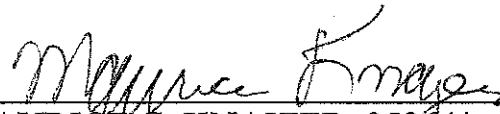
Case No.: 06SA165

**NOTICE OF TITLE BOARD**



The Title Board hereby notifies the Court that it will not be filing a brief in this case. Due to several pending election matters, undersigned counsel is unable to file the brief by the deadline set by the Court. The Board does not wish to prejudice or impair the rights of the proponents by seeking an enlargement of time at this stage of the petition cycle.

JOHN W. SUTHERS  
Attorney General



---

MAURICE G. KNAIZER, 05264\*

Deputy Attorney General  
Public Officials Unit  
State Services Section  
Attorneys for the Title Board  
\*Counsel of Record

CERTIFICATE OF SERVICE

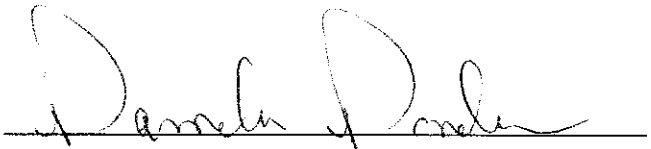
This is to certify that I have duly served the within NOTICE OF TITLE BOARD upon all parties herein by depositing copies of same in the United States mail, Express Mail, postage prepaid, at Denver, Colorado, this 9<sup>th</sup> day of June 2006 addressed as follows:

Edward T. Ramey  
Isaacson Rosenbaum P.C.  
633 17<sup>th</sup> St., Ste. 2200  
Denver, CO 80202

John C. Berry  
6457 S. Potomac Ct.  
Centennial, CO 80111

Scott E. Gessler  
Hackstaff Gessler LLC  
1601 Blake St., Ste. 310  
Denver, CO 80202

Mary Woodard  
191 University Blvd. #352  
Denver, CO 80206



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

<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><b>Petitioner:</b> NORA BASHIR, Objector,</p> <p>v.</p> <p><b>Respondents:</b> JOHN C. BERRY and MARY WOODARD, Proponents,</p> <p>and</p> <p><b>Title Board:</b> WILLIAM A. HOBBS, JASON R. DUNN, and DANIEL L. CARTIN.</p>	<p>Case No. 06SA165</p> <p>(Consolidated with Case No. 06SA166)</p>
<p>Attorneys for Petitioners: Edward T. Ramey, #6748 Isaacson Rosenbaum P.C. 633 17th Street, Suite 2200 Denver, Colorado 80202 Phone Number: 303/256-3978 Fax Number: 303/292-3152 E-mail: <a href="mailto:eramey@ir-law.com">eramey@ir-law.com</a></p>	
<p style="text-align: center;"><b>BRIEF OF PETITIONER</b></p>	

**TABLE OF CONTENTS**

I. STATEMENT OF ISSUES PRESENTED FOR REVIEW..... 1

II. STATEMENT OF THE CASE ..... 2

    A. Nature of the Case, Course of Proceedings, and Disposition  
        Before the Title Board ..... 2

    B. Statement of Facts ..... 3

III. SUMMARY OF THE ARGUMENT ..... 5

IV. ARGUMENT ..... 7

    A. Omission From the Titles for Both Initiatives of Any Reference  
        to Two Critical Components of the Initiatives ..... 7

    B. Omission From the Title for Initiative #122 of the Affirmative  
        Authorization of Deductions from Government Employee  
        Wages for Non-Political Purposes ..... 10

    C. The Single Subject Requirement Pertinent to Initiative #123 ..... 11

V. CONCLUSION..... 13

## TABLE OF AUTHORITIES

### **Cases**

In re Proposed Initiative 1997-1998 #64, 960 P.2d 1192 (Colo. 1998).....	12
In re Proposed Initiative for 1999-2000 #29, 972 P.2d 257 (Colo. 1999).....	8
In re Proposed Initiative for 1999-2000 #37, 977 P.2d 845 (Colo. 1999).....	8
In re Proposed Initiatives for 2003-2004 #32 and #33 and 2003-2004 #21 and #22, 76 P.3d 460 (Colo. 2003).....	12

### **Constitutional Provisions**

Colorado Constitution, Article V, § 1(5.5) .....	2, 7, 13
Colorado Constitution, Article XXVIII .....	3, 11
Colorado Constitution, Article XXVIII, § 2 .....	4

### **Statutes**

Colorado Revised Statutes § 1-40-106.5 (2005).....	2, 7
Colorado Revised Statutes § 1-40-107(1) (2005) .....	2, 8
Colorado Revised Statutes § 1-40-107(2) (2005) .....	2
Colorado Revised Statutes § 8-9-106 (2005).....	5
Colorado Revised Statutes § 8-9-107 (2005).....	11
Internal Revenue Code, 26 U.S.C. § 527(e)(2).....	9

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)<sup>1</sup> 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

---

<sup>1</sup> 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.

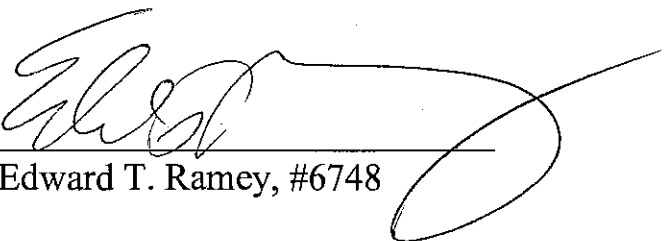
Respectfully, the Court is requested to declare that, consistent with the single subject requirement of Colo. Const. art. V, § 1(5.5), a single proposed initiative may only seek to amend the Constitution, or Colorado's statutory code, but not both together.

#### 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

ATTORNEYS FOR PETITIONER

**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:

**Via Federal Express**

John C. Berry  
6457 South Potomac Court  
Centennial, CO 80111

**Via Federal Express**

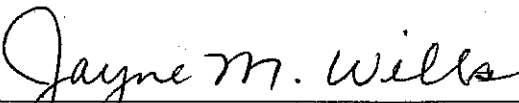
Mary Woodard  
191 University Boulevard, #352  
Denver, CO 80206

**Via Hand Delivery**

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

**Via Hand Delivery**

Maurice G. Knaizer, Esq.  
Deputy Attorney General  
Colorado Department of Law  
1525 Sherman Street, 5th Floor  
Denver, CO 80203

  
\_\_\_\_\_  
Jayne M. Wills

<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><b>Petitioner:</b> NORA BASHIR, Objector,</p> <p>v.</p> <p><b>Respondents:</b> JOHN C. BERRY and MARY WOODARD, Proponents,</p> <p>and</p> <p><b>Title Board:</b> WILLIAM A. HOBBS, JASON R. DUNN, and DANIEL L. CARTIN.</p>	<p>Case No. 06SA165</p> <p>(Consolidated with Case No. 06SA166)</p>
<p>Attorneys for Petitioners: Edward T. Ramey, #6748 Isaacson Rosenbaum P.C. 633 17th Street, Suite 2200 Denver, Colorado 80202 Phone Number: 303/256-3978 Fax Number: 303/292-3152 E-mail: <a href="mailto:eramey@ir-law.com">eramey@ir-law.com</a></p>	
<p style="text-align: center;"><b>BRIEF OF PETITIONER</b></p>	

**TABLE OF CONTENTS**

I. STATEMENT OF ISSUES PRESENTED FOR REVIEW..... 1

II. STATEMENT OF THE CASE ..... 2

    A. Nature of the Case, Course of Proceedings, and Disposition  
        Before the Title Board ..... 2

    B. Statement of Facts ..... 3

III. SUMMARY OF THE ARGUMENT ..... 5

IV. ARGUMENT ..... 7

    A. Omission From the Titles for Both Initiatives of Any Reference  
        to Two Critical Components of the Initiatives ..... 7

    B. Omission From the Title for Initiative #122 of the Affirmative  
        Authorization of Deductions from Government Employee  
        Wages for Non-Political Purposes ..... 10

    C. The Single Subject Requirement Pertinent to Initiative #123 ..... 11

V. CONCLUSION..... 13

## TABLE OF AUTHORITIES

### **Cases**

In re Proposed Initiative 1997-1998 #64, 960 P.2d 1192 (Colo. 1998).....	12
In re Proposed Initiative for 1999-2000 #29, 972 P.2d 257 (Colo. 1999).....	8
In re Proposed Initiative for 1999-2000 #37, 977 P.2d 845 (Colo. 1999).....	8
In re Proposed Initiatives for 2003-2004 #32 and #33 and 2003-2004 #21 and #22, 76 P.3d 460 (Colo. 2003).....	12

### **Constitutional Provisions**

Colorado Constitution, Article V, § 1(5.5) .....	2, 7, 13
Colorado Constitution, Article XXVIII .....	3, 11
Colorado Constitution, Article XXVIII, § 2 .....	4

### **Statutes**

Colorado Revised Statutes § 1-40-106.5 (2005).....	2, 7
Colorado Revised Statutes § 1-40-107(1) (2005) .....	2, 8
Colorado Revised Statutes § 1-40-107(2) (2005) .....	2
Colorado Revised Statutes § 8-9-106 (2005).....	5
Colorado Revised Statutes § 8-9-107 (2005).....	11
Internal Revenue Code, 26 U.S.C. § 527(e)(2).....	9

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)<sup>1</sup> 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

---

<sup>1</sup> 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.

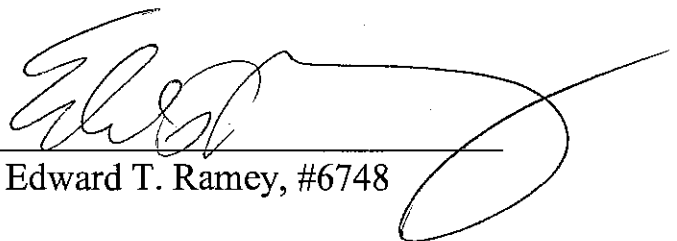
Respectfully, the Court is requested to declare that, consistent with the single subject requirement of Colo. Const. art. V, § 1(5.5), a single proposed initiative may only seek to amend the Constitution, or Colorado's statutory code, but not both together.

#### 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

ATTORNEYS FOR PETITIONER

**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:

**Via Federal Express**

John C. Berry  
6457 South Potomac Court  
Centennial, CO 80111

**Via Federal Express**

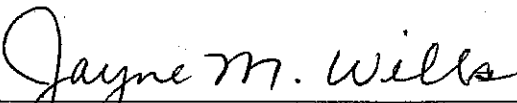
Mary Woodard  
191 University Boulevard, #352  
Denver, CO 80206

**Via Hand Delivery**

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

**Via Hand Delivery**

Maurice G. Knaizer, Esq.  
Deputy Attorney General  
Colorado Department of Law  
1525 Sherman Street, 5th Floor  
Denver, CO 80203

  
\_\_\_\_\_  
Jayne M. Wills

<p>SUPREME COURT, STATE OF COLORADO                  2 East 14<sup>th</sup> Ave.                  Denver, Colorado 80203</p>	<div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>FILED IN THE                      SUPREME COURT</p> <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> <p>JUN 14 2006</p> </div> <p>OF THE STATE OF COLORADO                      SUSAN J. FESTAG, CLERK</p> </div>
<p>ORIGINAL PROCEEDING PURSUANT TO                  C.R.S. 1-40-107(2), Appeal from the Ballot Title                  Setting Board</p>	
<p><b>Petitioner:</b>                  NORA BASHIR, Objector</p> <p>v.</p> <p><b>Respondents:</b>                  JOHN C. BERRY and MARY WOODWARD,                  Proponents,</p> <p>and</p> <p><b>Title Board:</b>                  WILLIAM A. HOBBS, JASON DUNN, and                  DAN CARTIN</p>	<p><b>▲ COURT USE ONLY ▲</b></p>
<p>Attorneys for Proponents:                  Scott E. Gessler, Reg. No. 28944                  Hugh C. Thatcher, Reg. No. 32661                  Hackstaff Gessler LLC                  1601 Blake Street, Suite 310                  Denver, Colorado 80202                  Telephone: (303) 534-4317                  Fax: (303) 534-4309                  E-mail: <a href="mailto:sgessler@hackstaffgessler.com">sgessler@hackstaffgessler.com</a></p>	
<p><b>PROPONENTS' BRIEF IN SUPPORT OF PROPOSED INITIATIVES</b>                  2005-2006 No. 122 AND No. 123</p>	

## TABLE OF CONTENTS

I.	STATEMENT OF ISSUES PRESENTED FOR REVIEW.....	5
II.	STATEMENT OF THE CASE.....	5
III.	SUMMARY OF ARGUMENT.....	5
IV.	ARGUMENT.....	6
	A.    Bashir asks this Court to add unnecessary detail to the title.....	6
	B.    The Title need not define the term “Political Purpose”.....	10
	C.    The initiative contains a single subject, regardless of whether it modifies more than one section of Colorado law.....	13
V.	CONCLUSION.....	14

## TABLE OF AUTHORITIES

### Cases

<u>Bauch v. Anderson</u> 497 P.2d 698 (Colo. 1972).....	7
<u>In re Proposed Initiative Concerning “State Personnel System”,</u> 691 P.2d 1121 (Colo. 1984).....	12
<u>In re the Title, Ballot Title and Submission Clause, and Summary for 1997-1998 No. 74,</u> 962 P.2d 927 (Colo. 1998).....	8
<u>In re the Title, Ballot Title and Submission Clause, and Summary for 1999-00 #256,</u> 12 P.3d 246.....	12,13
<u>In re the Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #255,</u> 4 P.3d 485 (Colo. 2000).....	12
<u>In re the Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #235(a),</u> 3 P.3d 1219 (Colo. 2000).....	13
<u>In re the Title, Ballot Title and Submission Clause, and Summary respecting the proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito,</u> 873 P.2d 733 (Colo. 1994).....	12
<u>In re the Title, Ballot Title and Submission Clause Regarding the Proposed Initiated Constitutional Amendment Concerning Ltd. Gaming in the Town of Burlington,</u> 830 P.2d P.2d 1023 (Colo.1992).....	7
<u>In re the Title, Ballot Title and Submission Clause pertaining to the Proposed Initiative Designated “Governmental Business”,</u> 875 P.2d 871 (Colo. 1994)...	10,12
<u>In re the Title, Ballot Title and Submission Clause, and Summary Pertaining to the Sale of Table Wine in Grocery Stores,</u> 646 P.2d 916 (Colo. 1982).....	9
<u>In re the Title, Ballot Title, Submission Clause, and Summary, Adopted April 4<sup>th</sup>, 1990, Pertaining to the Proposed Initiative on Surface Mining,</u> 797 P.2d 1275 (Colo. 1990).....	7

In re the Title, Ballot Title and Submission Clause, and Summary Pertaining to Proposed Tobacco Tax Amendment, 872 P.2d 689 (Colo. 1994).....6

McConnell v. Fed Election Comm’n, 540 U.S. 93 (2003).....11

**Statutes, Constitutional Provisions and Other Authorities**

C.R.S. § 1-40-106.5 (1)(a).....14

C.R.S. § 1-40-106.5 (1)(b).....14

26 U.S.C. § 527.....10

Ballot Title and Submission Clause, Proposed Ballot Initiatives 2005-2006 #122 and #123.....8



Proponents/Respondents John C. Berry and Mary Woodward (collectively “Berry”) through their undersigned counsel, respectfully submit the following Brief in support of their Petition for Review of Final Action of the Ballot Title Setting Board Concerning Proposed Initiative for 2005-2006 No. 122 and No. 123.

**I. STATEMENT OF ISSUES PRESENTED FOR REVIEW**

Berry does not dispute the issues as they are presented by Petitioner Nora Bashir (“Bashir”). The issues may be grouped into two categories. In the first category, the Petitioners claim in three instances that the Title Board omitted an important provision of the initiative, thus rendering the ballot title and submission clause misleading.

In the second category, Bashir claims that Proposed Initiative 2005-2006 #123 (“Proposal 123”) violates the single subject requirement.

**II. STATEMENT OF THE CASE**

Berry agrees with the statement of the case as set forth by the Bashir.

**III. SUMMARY OF ARGUMENT**

The ballot title and submission clause must briefly summarize the initiative, and therefore the title and submission clause cannot include every detail in the initiative. Accordingly, the Board must use its discretion to omit certain details. The title fairly and accurately summarizes the initiative, and Bashir cannot show that the

omitted details are material or significant omissions, or that the title and submission clause are misleading.

With respect to her single subject claim, Bashir does not meet Colorado's single subject standard. An initiative does not violate the single-subject requirement merely because it modifies both Colorado statute and Colorado law. Here, the proposed initiative does not create two subjects, because the proposal simply ensures that Colorado statute conform to Colorado constitution.

#### **IV. ARGUMENT**

##### **A. Bashir asks this Court to add unnecessary detail to the title.**

Bashir claims that the Title Board erred by not including in the title a specific reference that governmental entities may not transfer dues to labor organizations if the dues are used for political purposes. With respect to Proposed Initiative 2005-2006 #122 ("Proposal 122) Bashir claims that the title and submission clause should affirmatively state that dues may be deducted for non-political purposes.

Bashir does not argue that the title uses inaccurate or misleading words; rather she claims that the title lacks sufficient detail. But when setting a title, the Board is not required to describe every feature of a proposed measure, nor is it required to detail every aspect of the initiative.<sup>1</sup> This Court has traditionally

---

<sup>1</sup> *In re the Title, Ballot Title and Submission Clause, and Summary Pertaining to Proposed Tobacco Tax Amendment*, 872 P.2d 689, 694 (Colo. 1994) ("hereinafter *In*

deferred to the difficult choices made by the Board because in summarizing an initiative, the Board cannot possibly include everything; it must therefore exercise discretion to summarize the central features of an initiative and to exclude unnecessary detail. For this reason “[a]ll legitimate presumptions must be indulged in favor of the propriety of the Board’s actions,” and only in a clear case “should a title prepared by the Board be held invalid.”<sup>2</sup> Accordingly the Court “will not interfere with the Board’s choice of language if the language is not clearly misleading.”<sup>3</sup> Here the title and submission clauses are not clearly misleading. Accordingly, none of the Petitioners’ claims overcome the presumption of validity.

Both of Bashir’s claims fail because she asks that the title include information that does not change the meaning or function of the initiative. With respect to her complaint about labor organizations, the title and submission clauses state the general principle that the proposals “prohibit[] any deductions by a state or

---

*re Tobacco Tax Amendment”); In re the Title, Ballot Title, Submission Clause, and Summary, Adopted April 4<sup>th</sup>, 1990, Pertaining to the Proposed Initiative on Surface Mining, 797 P.2d 1275, 1279 (Colo. 1990) (“hereinafter In re Proposed Initiative on Surface Mining”).*

<sup>2</sup> *Bauch v. Anderson*, 497 P.2d 698, 699 (Colo. 1972).

<sup>3</sup> See, e.g., *In re the Title, Ballot Title and Submission Clause Regarding the Proposed Initiated Constitutional Amendment Concerning Ltd. Gaming in the Town of Burlington*, 830 P.2d 1023, 1026 (Colo. 1992).

local government from an employee's wages for political purposes.”<sup>4</sup> This statement accurately reflects the initiative's prohibition on *any* deductions of monies to be used for a political purpose. By its plain language, it informs voters that there are no exceptions. Accordingly, the prohibition includes deductions to any organization, including tax-exempt organizations, labor unions, corporations, associations, individuals, or any other type of entity.

The title and submission clauses need not specify each and every type of entity to which this prohibition applies. Indeed, including a specific prohibition on labor organizations within the title and submission clauses would have absolutely no effect on their meaning. Rather, it would add unnecessary detail. The Title Board has correctly summarized the central, organizing feature of both initiatives, and the title and submission clause “need not spell out every detail of a proposed initiative in order to convey its meaning accurately and fairly.”<sup>5</sup>

Furthermore, the title and submission clauses need not include a specific reference to the labor organization provision, even if the initiative itself contains the reference. First, the title and submission clauses need not include detail such as

---

<sup>4</sup> Ballot Title and Submission Clause, Proposed Ballot Initiatives 2005-2006 #122 and #123.

<sup>5</sup> *In re the Title, Ballot Title and Submission Clause, and Summary for 1997-1998 No. 74*, 962 P.2d 927, 930 (Colo. 1998).

redundancies or specific instances of a general rule. Second, the labor organization provision is not critical. Indeed, it could easily be removed from the initiative itself without changing the meaning whatsoever.

For the same reasons, this Court should reject Bashir's claim that the title and submission clause for Proposal 122 must include a statement that the initiative continues to allow deductions from employee wages for non-political purposes. Under current law, state and local governments may deduct monies from employee wages for non-political purposes. Proposal 122 merely repeats that it does not change the current state of affairs.

As a result, Bashir effectively asks this Court to require the Title Board to state within the title and submission clauses the manners in which the initiative does *not* change current law. This Court has held that “[t]here is no requirement that every possible effect be included within the title or the ballot title and submission clause. Such matters are capable of being brought to the attention of the voters by public debate.”<sup>6</sup> By the same token, the ballot title and submission clause need not contain every *non*-effect. The Title Board has already summarized Proposal 122's central features. It need not explain what the central features do not include.

---

<sup>6</sup> *In re the Title, Ballot Title and Submission Clause, and Summary Pertaining to the Sale of Table Wine in Grocery Stores*, 646 P.2d 916, 921 (Colo. 1982).

**B. The title need not define the term “Political Purpose.”**

A title must include a definition only if the defined term “adopts a new or controversial legal standard which would be of concern to all concerned with the issue.”<sup>7</sup> Bashir claims that it is misleading to exclude from the title information that “political purpose” includes ordinary and necessary business expenditures relating to an office. But the initiative’s definition of “political purpose” does not create a new or controversial legal standard. Indeed, the portion to which the petitioner objects is modeled directly after federal law. Federal law defines a “political organization” to include organizations that spend funds for the purpose of

influencing or attempting to influence the selection, nomination, election, or appointment of any individual to 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. Such term includes the making of expenditures relating to an office described in the preceding sentence which, if incurred by the individual, would be allowable as a deduction.<sup>8</sup>

The initiative contains nearly identical language. In short, the initiative relies on longstanding federal law, and it cannot be said to adopt a new or controversial standard.

---

<sup>7</sup> *In re Proposed Initiative Designated “Governmental Business”*, 875 P.2d 871 at 877.

<sup>8</sup> 26 U.S.C. § 527.

Bashir cannot claim that that expenses relating to elective offices are not normally considered as money spent for a “political purpose.” First, she presented this same argument to the Title Board, which rejected her reasoning. Indeed, this Court should defer to the Title Board’s discretion, particularly when Bashir cannot present any firm evidence to this court regarding the “normal” or widespread view of “political purpose.” Furthermore, ordinary expenses relating to an elected office normally fall within activities that have a political purpose. Like normal campaign communications, they are often intended by an officeholder to communicate with potential voters. Indeed, they often closely resemble political advertisements. Finally, the United States Supreme Court has recognized that “educational” communications that never expressly advocate for or against a candidate can nonetheless function exactly like express advocacy.<sup>9</sup>

Finally, this Court has repeatedly refused to require definitions in titles, even if the definition is more ambiguous, unusual, or complex than the term “political purpose.” Thus, the Court has upheld titles that did not contain definitions of:

---

<sup>9</sup>*McConnell v. Fed. Election Comm’n*, 540 U.S. 93, 126-128 (2003).

- “limited gaming” because the title clearly signaled a proposed change in the scope of limited gaming;<sup>10</sup>
- “governmental business” because the terms governmental and business were within the common understanding of the voter, and the definition contained nothing novel or cryptic;<sup>11</sup>
- “exempt positions” and “exemptions” because the titles required brevity, and the terms were not misleading or inaccurate;<sup>12</sup>
- “committed area,” “regular election,” “areas committed to development,” and “future growth areas” because the titles required brevity, and the terms were not misleading or inaccurate;<sup>13</sup>
- “gun show” or “firearm” because neither terms were new or technical;<sup>14</sup> and

---

<sup>10</sup> *In re the Title, Ballot Title and Submission clause respecting the Proposed Initiated Constitutional Amendment Concerning Ltd. Gaming in the City of Antonito*, 873 P.2d 733, 740 (Colo. 1994).

<sup>11</sup> *In re Proposed Initiative Designated "Governmental Business"*, 875 P.2d 871 at 877.

<sup>12</sup> *In re Proposed Initiative Concerning "State Personnel System"*, 691 P.2d 1121, 1123-1124 (Colo. 1984).

<sup>13</sup> *In re the Title, Ballot Title and Submission Clause, and Summary for 1999-00 #256*, 12 P.3d 246, 256 (Colo. 2000).

<sup>14</sup> *In re the Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #255*, 4 P.3d 485, 497 (Colo. 2000).



- “base area” because it reflected common sense meaning.<sup>15</sup>

The term “political purpose” fits within the well-established case law: it is not misleading or inaccurate; it is not new or technical; it contains nothing novel or cryptic; and it reflect a common sense understanding of actions that have a political purpose.

**C. The initiative contains a single subject, regardless of whether it modifies more than one section of Colorado law.**

Bashir claims that Proposal 123 violates the single subject requirement because it amends both the Colorado constitution and Colorado statute. In making this argument, she ignores Colorado’s single-subject standard as well as past practice.

A ballot measure only violates Colorado’s single subject matter if it “relates to more than one subject and has at least two distinct and separate purposes which are not dependent upon or connected with each other.”<sup>16</sup> Here, it cannot be argued that Proposal 123 violates this standard. The proposal’s change to Colorado statute is an innocuous conforming amendment, to ensure that Colorado statute reflects the

---

<sup>15</sup> *In re the Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #235(a)*, 3 P.3d 1219, 1225 (Colo. 2000).

<sup>16</sup> *See, e.g., In re the Title, Ballot Title and Submission Clause, and Summary for 1999-00 # 256*, 12 P.3d 246, 253 (Colo. 2000).

Colorado Constitution. Indeed, the proposal's modification to both constitution and statute do not create two incongruous subjects or have the purpose of enlisting support for unrelated matters and the modification to Colorado statute does not create a new surreptitious subject.


In short, Bashir attempts to replace the single subject requirement with the "single statute" requirement. This elevation of form over substance ignores Colorado's single subject standards and would effectively prohibit any initiative from ever amending any topic that appeared in both the Colorado constitution and Colorado statute.

## V. CONCLUSION

Berry requests this Court to affirm the Title Board action.

Respectfully submitted this 14th day of June, 2006.

By: \_\_\_\_\_

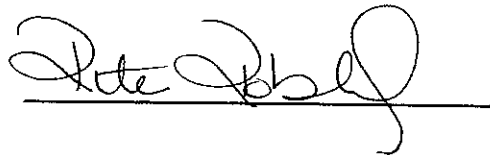
  
Scott E. Gessler, Reg. No. 28944  
Hugh C. Thatcher, Reg. No. 32661  
Hackstaff Gessler, LLC  
1601 Blake Street  
Suite 310  
Denver, Colorado 80202  
(303) 534-4317  
(303) 534-4309 (facsimile)  
Attorneys for Proponents/Respondents

**CERTIFICATE OF SERVICE**

I certify that on this 14th day of June 2006 the foregoing **PROponents' BRIEF IN SUPPORT OF PROPOSED INITIATIVES 2005-2006 No. 122 AND No. 123** was served on all parties and other interested persons via hand delivery addressed to the following:

Edward T. Ramey  
Isaacson Rosenbaum, P.C.  
633 17<sup>th</sup> Street,  
Suite 2200  
Denver, Colorado 80202  
Attorneys for Petitioner

Maurice G. Knaizer, Esq.  
Office of the Attorney General  
Colorado Department of Law  
1525 Sherman Street, 5<sup>th</sup> Floor  
Denver, CO 80203

A handwritten signature in black ink, appearing to read "Peter Abel", is written over a horizontal line.

SUPREME COURT, STATE OF COLORADO  
TWO EAST 14<sup>TH</sup> AVENUE  
DENVER, COLORADO 80203

Combined Case  
No. 06SA165  
and 06SA166

ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2),  
C.R.S. (2005)  
Appeal from the Ballot Title Setting Board

IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE, AND  
SUMMARY FOR 2005-2006, #122

**Petitioner:**

NORA BASHIR, Objector,

v.

**Respondent:**

JOHN C. BERRY and MARY WOODARD, Proponents,

and

**Title Board:**

WILLIAM A. HOBBS, JASON R. DUNN, and DANIEL L. CARTIN.

-----  
IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE, AND  
SUMMARY FOR 2005-2006, #123

**Petitioner:**

NORA BASHIR, Objector,

v.

**Respondent:**

JOHN C. BERRY and MARY WOODARD, Proponents,

and

**Title Board:**

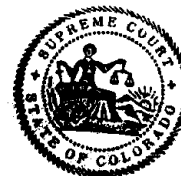
WILLIAM A. HOBBS, JASON R. DUNN, and DANIEL L. CARTIN.

**ORDER OF COURT**

Upon consideration of the Petitions for Review, together with briefs filed herein, and now being sufficiently advised in the premises,

IT IS ORDERED that the actions of the Title Board are AFFIRMED.

BY THE COURT, EN BANC, JUNE 16, 2006.



Copies mailed via the State's Mail Services Division on 6-16-06 EAC

Edward T. Ramey  
Isaacson Rosenbaum P.C.  
633 17<sup>th</sup> St., Ste. 2200  
Denver, CO 80202

John C. Berry  
6457 S. Potomac Ct.  
Centennial, CO 80111

Scott E. Gessler  
Hackstaff Gessler LLC  
1601 Blake St., Ste. 310  
Denver, CO 80202

Mary Woodard  
191 University Blvd. #352  
Denver, CO 80206

Maurice G. Knaizer, Deputy AG  
Colorado Department of Law  
State Services Section