

<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 auto; width: 80%;"> <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>
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<p><b>PROPONENTS' BRIEF IN SUPPORT OF PROPOSED INITIATIVES</b>  <b>2005-2006 No. 122 AND No. 123</b></p>	

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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

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<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

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*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

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<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.

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<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.

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<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:

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<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

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<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

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<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.

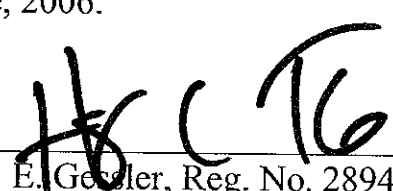
In short, Bashir attempts to replace the single subject requirement with the "single statute" requirement. This elevation of form over substance ignores Colorado's single subject standards and would effectively prohibit any initiative from ever amending any topic that appeared in both the Colorado constitution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

## V. CONCLUSION

Berry requests this Court to affirm the Title Board action.

Respectfully submitted this 14th day of June, 2006.

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

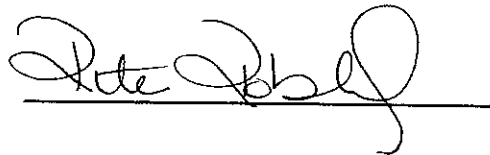
  
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**CERTIFICATE OF SERVICE**

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:

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