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SUPREME COURT, STATE OF COLORADO
Court Address: Colorado State Judicial Building
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Denver, CO 80203

ORIGINAL

Case No. 06SA20

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

IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2005-2006 #55

FILED IN THE SUPREME COURT
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OF THE STATE OF COLORADO
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MANOLO GONZALES-ESTAY,

Petitioner,

and

RICHARD D. LAMM, WALDO BENAVIDEZ & FRED ELBEL,

Proponents,

and

WILLIAM HOBBS, ALLISON EID, and DAN CARTIN,

Respondents.

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Case No.: 06SA20

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PROPONENTS ANSWER BRIEF

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

STATUTES

CONSTITUTIONAL PROVISIONS

TREATISES AND LAW REVIEW ARTICLES

Proponents Richard D. Lamm, Waldo Benavidez, and Fred Elbel, through their counsel of record, hereby submit this answer brief in support of the final decision of the State Title Board in setting and approving title for proposed Initiative 2005-06 #55 (the Proposed Initiative").

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1) Whether this court's consideration of petitioner's appeal from the Title Review Board's order of January 4, 2006 (approving the single subject of the Proposed Initiative) would violate applicable principles of "Law of the Case", and Res Judicata in that it seeks renewed review here of this court's previous final decision in (#88) upholding the Title Review Board's approval of the substantially similar Proposed Initiative #88 on the same grounds or grounds which might have been and should have been raised by petitioners in #88.

2) Whether the Proposed Initiative violates the single subject requirement of COLO. CONST. Art. V, § 1 (5.5).

BACKGROUND FACTS

Proposed Initiative 2003-2004 # 88 (hereinafter Initiative #88) was first submitted to the Secretary of State in December 2003. The language of Initiative #88 was substantially the same as the Proposed Initiative #55, differing only in minor

technical respects. This initiative was approved as to single subject matter by the Title Board on March 3, 2004, with the technical changes noted.

On April 5, 2004, petitioner Manolo Gonzalez-Estay, and Ramon Del Castillo (hereinafter "#88 Petitioner") filed an opening brief in their appeal of the Title Board decision, arguing that Initiative #88 was misleading because, inter alia, it did not "reflect the way in which this measure is to be enforced because enforcement is often a key element of many initiatives." (Pet. #88 Reply Brief at 1).

The #88 Petitioner further broached in its reply brief the issue of "single subject", asserting in regard to Initiative 88's alleged ambiguous enforcement procedures that "Petitioners do not contend that this is a separate subject, nor could they do so in a principled matter." (Pet. #88 Reply Brief at 1). The #88 Petitioners concluded by gratuitously acknowledging that "As title challenges go, this one is admittedly spare."(Pet's Reply. Br. At 6).

On May 6, 2004, this Court denied the #88 Petitioner's appeal *In the Manner of the Title and Submission Clause for 2003-04* #88, and upheld the Title Board's decision finding that Initiative #88 set forth a single subject.

Despite the fact that the Proponents prevailed in that case, however, the delay caused by the petitioner's appeal successfully deprived Proponents of the time needed to obtain sufficient signatures by the August, 2004 deadline for the 2004 November election. Because the initiative could not be placed on the 2005 ballot since it was not a tax proposal, the Proponents were reduced to re-submitting the initiative to the Title Board for inclusion on the 2006 ballot (now titled as Initiative 2005-2006 # 55). Yet

again, on January 4, 2006, the Title Board approved the "single subject" of the initiative.

Apparently rethinking its previous contention that it could "not contend that this is a separate subject, nor could they do so in a principled manner," yet again the Petitioners appealed on much the same grounds as in its previous appeal, except that now the Petitioner urged the same arguments as before (regarding ambiguous enforcement) to now support its purported "new" claim that Initiative #55 does not reflect a "single subject". (Pet's. Br. 2, at footnote 1).

Just as in its previous appeal the Petitioner argued (in support of its contention that Initiative #88 enforcement mechanism was misleading) that "voters have a right to know whether the way in which the measure is to be enforced will help effectuate or undermine the espoused policy goal", so in its current brief it argues (in support of its contention that the initiative now violates the "single subject" rule) that "voters ought to consider the sea change separately from the denial of street sweeping services to illegal immigrants."

The "sea change" referred to by the Petitions apparently refers to the possibility that a future renegade court interpreting the Proposed Initiative might conceivably enforce it by denying such "fundamental rights" to an illegal immigrant as the right to habeas corpus (should an illegal immigrant be arrested), appeal (should an illegal immigrant be convicted of an offense while in Colorado), and freedom from arbitrary confiscation of property.

SUMMARY OF ARGUMENT

1) Both the doctrine of "Law of the Case" and "Res Judicata" precludes the reconsideration by this court of the same issues already finally adjudicated by this court *In the Matter of the Title and Submission Clause for 2003-04* #88, Case No. 04SA95 (May 6, 2004) including the issue of whether the Proposed Initiative sets forth a "single subject" in compliance with COLO. CONST. Art. V, § 1 (5.5).

2) The Proposed Initiative states a single subject as required by COLO. CONST. Art. V, § 1 (5.5).

ARGUMENT

I.

The doctrines of both "Law of the Case" and "Res Judicata" preclude judicial reconsideration of the issues in this case (including whether Title #88 states a single subject), since those issues have already been finally adjudicated by this court in *In the Matter of the Title, Ballot Title and Submission Clause for 2003-04 #55 (No. 04SA98, May 6, 2004)*.

In *In the Matter of the Title, Ballot Title and Submission Clause for 2003-04 #88* (No. 04SA95, May 6, 2004), the petitioners appealed the decision of the Title Board approving Initiative #88 as a single subject. In its Reply Brief in that case, Petitioners argued that "the Board's failure to refer to the enforcement mechanism chose by Proponents was error" (Pet's. Reply Br. At 1) because "the means of enforcement

slected by Proponents clearly is a *major, related topic*; describing how this measure is to be enforced provides information that is relevant in assessing whether to support or oppose this ballot proposal. An enforcement tool may be too meek or too aggressive; it may be effective or toothless. In either event, the voters have a right tot know whether the way in which the measure is to be enforced will help effectuate or undermine the espoused policy goal of the Proponents." (Emphasis added. *Id.*)

The Petitioner's argument may therefore be characterized as asserting that "The failure to describe the enforcement provision of the initiative with any specificity resulted in a ballot title was misleading." (Pet's.Op. Br. at 2).

Petitioner's apparently recognized that the alleged failure of the initiative to specifically describe the initiative's enforcement mechanisms was not an appropriate basis upon which to argue that the initiative violated the requirement that an initiative state a single subject as required by COLO. CONST. Art. V, § 1 (5.5), since Petitioners forthrightly acknowledged in its reply brief that "Petitioners do not contend that this is a separate subject, nor could they do so in a principled manner." (Pet's. Reply. Br. At 1).

Although this Court in that case upheld the Title Board's determination finding that initiative #88 stated a single subject, the delay caused by the appeal was successful in depriving the Proponents of the time necessary to gather sufficient signatures to place the initiative on the 2004 ballot. Nor could the Proponents place its initiative on the 2005 ballot inasmuch as it was not tax-related. Since the Title Board had required several minor technical changes in the text of Initiative #88, the Proponents were again

obliged to seek Title Board approval for the initiative, which was subsequently retitled as Initiative #55, and which is the subject of this appeal from the Title Board.

On January 4, 2006, the Title Board yet again approved the Initiative (now retitled as Initiative #55) as stating a single subject, and yet again Petitioner's appealed to this Court. Faced with this Court's final decision upholding the Title Board finding of single subject in Initiative #88, the Petitioner's chose to resurrect its old argument concerning the alleged failure of Initiative #88's to spell out possible unintended enforcement mechanisms; only this time they set forth this argument not to support it previous grounds for challenge (i.e., that the initiative was "misleading"), but rather to support what it claimed was an entirely new grounds—namely that the initiative violated the "single subject" rule. (Pet's Op. Br. At 2).

Despite the fact that this Court has made clear that, in determining whether an initiative states a single subject, it will not "interpret the meaning of the language or suggest its probable application if adopted by the electorate", *In Re Limited Gaming in City of Antonito, 873 P.2d 733, 739 (Colo. 1994),* Petitioners trot out in their brief a litany of horribles in the form of ways in which a renegade court might conceivably choose to enforce the Proposed Initiative, and which, if so enforced, would presumably constitute a "separate subject". For example, despite the fact that Initiative #88 does nothing more than restrict "non-emergency services by the State of Colorado" to citizens and legal residents, Petitioners speculate that a future renegade court could conceivably enforce Initiative #88 by interpreting the word "services" in such a way as to deprive an illegal resident of the right to the "services" of an appellate court

reviewing an illegal resident's own criminal conviction, or even deny such a person the right of habeas corpus, or the rights to due process. (Pet's Opening Brief at 7-10).

Whether this argument invites this Court to "suggest (an initiative's) probable application if adopted by the electorate is discussed, infra in Part II of this brief. For this section, it suffices to note that the Petitioner's arguments have already been considered by this court and rejected. Indeed, as noted, Petitioners' previously acknowledged that "Petitioners do not contend that this is a separate subject, nor could they do so in a principled manner", citing Matter of *Title and Ballot Title and Submission Clause of Initiative 2001-2002 #46*, 46 P.2d 438, 444 (Colo. 2002).

The doctrine of "Law of the Case" sets forth the principle that "issues once decided in a case that recur in later stages of the same case are not to be redetermined. Just as notions of collateral estoppel prevent the relitigation of the same issues in successive suits, this doctrine limits relitigation in successive stages of a single suit. " Jack H. Friedenthal, et al, Civil Procedure 650 (4th ed. 2005); see also *Kuhn v. State*, 897 P.2d 792,794 (Colo. 1995) ("Law of the case differs from res judicata because law of the case applies to final decisions that affect the same parties in the same case"). Furthermore, the doctrine of Law of the Case serves the "dual purpose of protecting against the reargument of settled issues and assuring the adherence of lower courts to the decisions of higher courts." *People v. Roybal*, 672 P.2d 1003, 1005 (Colo. 1983).

In addition, "Rulings *logically necessary* to the holding of the appellate court also become law of the case". (Emphasis added) *Id.* at 1005, citing *Morton v. Laesch*, 32

Colo. 541;125 P 498 (1912); see also *Greeley & Loveland irrigation Co. v. Handy Ditch Co*, 77 Colo. 487, 492; 240 P. 270, 272 (1925.)

Since Initiative #88 is, with minor technical changes in the language, substantially the same as initiative #88, and this court in *In the Matter of the Title, Ballot Title and Submission Clause for 2003-2004 #88* upheld the decision of the Title Board finding that #88 states a single subject, the issue of whether #55 states a single subject should not be redetermined.

Petitioner is not helped, however, even if this court determines that the minor technical changes in Initiative #88 served to create a separate case, thereby rendering the doctrine of Law of the Case inapplicable. Nor is Petitioners' case for relitigation furthered even if the Court accepts Petitioner's assertion that its lack of specificity of enforcement argument in #88 (in support of it position that the initiative was "misleading") was materially different from it lack of specificity of enforcement argument in #55 (in support of its position that the initiative did not state a single subject). That is because under the doctrine of Res Judicata, and its corollary doctrine of Bar and Merger "a prior judgment ends litigation, 'not only as to every ground of recovery that was actually presented in the action but also as to every ground *which might have been presented.*' " (Emphasis added). Friedenthal, *supra*, at 654, citing *Cromwell v. County of Sac*, 94 U.S. (4 Otto) 351, 353 (1876).

A leading case is *Schuyhill Fuel v. Nieberg*, 274 U.S. 316, 321 (1927), at which the U.S. Supreme Court stated that "a cause of action does not consist of facts, but of the unlawful violation of a right which the facts show. The number or varieties of facts

alleged do not establish more than one cause of action as long as their result, whether they be considered severally or in combination, is the *violation of but one right by a single legal wrong.*" (Emphasis added).

Professor Friedenthal further notes that "because the scope of res judicata extends beyond what actually has been litigated, it prevents the plaintiff from fragmenting his case into many separately prosecuted claims in order to harass the defendant with the expense of litigation. In this way res judicata serves to encourage joinder of claims, resulting in judicial economy." Friedenthal, *supra*, at 654; see also *Salida Sch. Dist. R-32-J v. Morrison*, 732 P.2d 1160, 1163 (Colo. 1987) (noting that claim preclusion serves to "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and by preventing inconsistent decisions, encourage reliance on adjudication"; *Cruz v. Benine*, 984 P.2d 1173, 1176 (Colo. 1999) ("(T)he doctrine not only bars litigation of issues actually decided, but also any issues *that could have been raised in the previous proceeding but were not.*") (Emphasis added).

For additional Colorado cases applying the doctrine of res judicata, see *City of Westminster v. Church*, 445 P.2d 52 (Colo. 1968); *Farmers v. City of Golden*, 975 P.2d 189 (Colo. 1999); *the City & County of Denver V. Block 173 Ass.* 814 P.2d 824 (Colo. 1991); *E-470 Public Highway Auth. V. Argus*, 70 P.3d 481 (Colo. Ct. App. 2002); *S. Platte River Basin Inc. v. the City of Boulder*, 73 P.3d 22 (Colo. 2003).

It is well that this Court has adopted this doctrine, for without it there would be no reason why the Petitioners could not appeal a Title Board decision, selecting only one of several possible grounds for appeal, but nevertheless successfully delaying a

final decision until it was too late for Proponents to procure sufficient signatures to put the initiative on the ballot; then when the same or similar initiative is again submitted to the Title Board, to again appeal, but this time on claimed different grounds, despite the fact that such grounds could have been and should have been raised in the prior proceeding.

Indeed, without application of this doctrine, there would be nothing to keep Petitioners from delaying the approval of the initiative a second time, and then appealing a third time on yet different statutory grounds but using exactly the same facts to support their position.

In conclusion, Initiative #88 is substantially the same as Initiative #55, and this court has previously rendered a final decision upholding the Title Board finding that Initiative #88 states a single subject. Indeed, Petitioners conceded in the case of Initiative #88 that Petitioners could not claim that the initiative contains a separate subject "in a principled manner". Therefore the Law of the Case precludes reconsideration of the Petitioners' appeal in Initiative #55.

Furthermore, even if Petitioners' appeal of #88 is considered to be a separate case from #55, the doctrine of res judicata precludes its relitigation since its appeal includes issues that "could have been raised in the previous proceeding but were not."

II

The Proposed Initiative #55 contains a single subject.

1. Title Board Actions are Presumed Valid

Upon review, this Court will "treat the actions of the Board as presumptively valid. *Title, Ballot Title and Submission Clause and Summary for 1999-2000 #235(a), 3 P. 3d 1219, 1922, citing In Re Proposed Initiative for #103, 987 P.2d 249, 254 (Colo. 1999); Say v. Baker, 322 P.2d 317, 319 (1958).*

In reviewing the actions of the title Board, this Court grants "great deference to the board's broad discretion in the exercise of its drafting authority." *Percy v. Felder, 12 P. 3d 246, 255 (Colo. 2000)* (title Board affirmed), citing *Kelly v. Tancredo, 913 P.2d at 1131; In Re Proposed Initiative concerning State Personnel System, 691 P. 2d 1121, 1125 (Colo. 1984).* This Court "will permit all legitimate presumptions to be drawn in favor of the propriety of the board's action when considering challenges to titles, submission clauses or summaries. *Id. at 1123, citing In Re an Initiated Constitutional Amendment Respecting Rights of the public to Uninterrupted Services by Public Employees, 609 P.2d 631 (1980).*

2. The Proposed Initiative contains a Single Subject

The Colorado Constitution requires that every constitutional amendment or law be "limited to a single subject." COLO. CONST. Art. V, § 1 (5.5). The purpose of this constitutional provision is to "forbid the treatment of incongruous subjects in the same measure, especially the practice of putting together in one measure subjects having no necessary or proper connection, for the purpose of enlisting in support of the measure

the advocates of each measure, and thus securing the enactment of measure that could not be carried upon the merits." Colo. Rev. Stat. § 1-40-6.5 (2005).

In construing the statutory requirement that bills contain a single subject, the Title Board is required to "apply judicial decisions construing the constitutional single requirement for bills and should follow the same rules employed by the general assembly in considering titles for bills." Colo. Rev. Stat. § 1-40-106.5(3). Accordingly, the courts applying the single subject requirement have presumed a statute to be constitutional and declared that it should not declared void, "unless that conclusion is established beyond a reasonable doubt." *In Re House Bill No.* 1353, 738 P.2d 371, 372 (1987).

An example of the type of legislation that the single subject rule was intended to curtail is found in *In Re House bill 1353, supra.* In that case, a single bill consisting of forty four pages and forty six sections purported to: 1) reduce state contributions to states employee's retirement funds; 2) charge prison inmates for medical visits; 3) impose a surcharge on insurance carried based on workmen's' compensation premiums: 4) provide for forfeiture of abandoned intangible property by banks; and 5) eliminate state aid for instructional television. This Court appropriately ruled that the common characteristic of "financial savings" did not save the bill. *Id.* at 373. See also discussion of this case at Richard Collins and Dale Osesterle, *Governing by Initiative: Structuring the Ballot Initiative" Procedures That Do and don't Work, 66 U. Colo. L. Rev. 47 (Winter, 1995).*

Another example or an initiative that was found to violate the single subject rule is found in *In Re Proposed Initiative for* 1997-1998 #30, 959 P.2d 822 (Colo. 1998), where the Court found that an initiative which set forth entirely separate subjects—one proposing a tax cut, and another proposing amending criteria for approval of revenue and spending increase—violated the single subject rule.

No problem even remotely similar to that encountered in *House Bill No. 1353* or *Initiative #30* can be found in the Proposed Initiative, which in two succinct sections limits the provision of non-emergency services to those persons lawfully present in the United States.

Petitioners' naked assertion that this initiative constitutes multiple subjects appears to reside exclusively on the possibility that a future court might apply this initiative in a way which could conceivably affect other areas of the law, such as the right to appeal a criminal conviction, or the right to file a writ of habeas corpus. However, it is now settled that "there mere fact that a constitutional amendment may affect the powers exercised by government under pre-existing conditions does not, taken alone, demonstrate that a proposal embraces more than one subject. All proposed constitutional amendments or laws would have the effect of changing the status quo in some respect if adopted by voters." *In Re Title, Ballot Title and Submission Clause for Proposed Initiatives* 2001-2002 #21 and #22, 44 P.3d 213, 218 (Colo. 2002), citing *In Re Ballot Title 1999-2000 #258(A)*, 4 P. 3d 1094, 1098 (Colo. 2000) (concluding that the previous proposed initiative for English language education in public schools did not contain multiple subjects).

This Court has further cautioned that "We must exercise caution to avoid determining how a measure, not yet approved by the voters, may apply. It is neither appropriate nor possible for the court to attempt to predict all of the effects of an amendment at the pre-election stage. ...We must engage in some substantive inquiry but *avoid predicting legal consequences."* (Emphasis added). *In Re Title, Ballot Title and Submission Clause, and Summary for 1997-98 #30*, 959 P. 2d 822, 825, fn. 2 (Colo. 1998). Finally, "initiatives connected to one another *by tending to effect or carry out one general objective or purpose* should be allowed as presenting only a single subject." (Emphasis added). *In Re Title, Ballot Title and Submission Clause and Summary for 1990-2000 #25*, 974 P. 2d 458, 463 (Colo. 1999).

In *Ballot Title #21 and #22, supra*, the court considered the petitioner's argument that a proposed English language initiative purporting to provide parents with the option of transferring their children from English immersion programs to bilingual education in fact contained "the separate, distinct, and unconnected superstitious purpose of abolishing bilingual education programs throughout the Colorado's public school system", and further would have the unintended affect of impacting "the traditional powers of school boards". *Id.* at 1094. In rejecting that argument, this Court held that a "logical incident" of adopting a proposed initiative does not result in a "separate, distinct, or unconnected subject". *Id.* at 1094. It certainly follows from this that a non-logical incident (such as those suggested by the Petitioners in this case, i.e., inter alia, the denial of the right of an illegal resident to appeal his own criminal conviction) would be even less likely to constitute a "separate, distinct, or unconnected subject."

See also "*In Re Amend Tabor No.* 32. 908 P.2d 125, 129 (Colo. 1995) (Upholding proposed initiative that included a tax credit for six states and local taxes, where single purpose of initiative was implementation of tax credit, all six taxes were connected to same tax credit and were bound by same limitations, and initiative provisions requiring mandatory replacement of lost local government revenues was dependent upon and closely connected to the tax credit); *In Re Proposed Ballot Initiative on Parental Rights,* 913 P.2d 1127, 1131 (Colo. 1996) (Upholding proposed initiative that sought to establish Parents' rights of control over their children in four distinct areas: upbringing , education values and discipline); and *In Re Proposed Initiative for* 1997-1998 # 74, 962 P.2d 927, 929 (Colo. 1998) (Upholding proposed initiative creating school impact fees on new construction, although initiative also specified that payment or exemption from fees would be resolved by school boards or by current law governing use of school initiatives and referenda.)" all cited in *In Re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #25*, 974 P.2d 458, 464 (Colo. 1999).

Nor is the Title Board required to "present a side-by-side proposal of the existing law and how the proposed initiative would change it. It need not touch on every aspect of a proposal." *In Re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #246 (e)*, 8 P. 3d 1194, 1197 (Colo. 2000). Nevertheless, Petitioners appear to propose precisely that by asserting that sometime in the future this Court might interpret initiative #88 to deprive unlawful residents of the right to appeal their own criminal convictions; though far-fetched, this appears to be in fact an argument that the initiative is "misleading", in that it fails to inform voters of the possible implications of passing

the initiative. However, Petitioners claim on appeal that initiative #88 (initiative 55's predecessor with minor technical changes) was misleading was previously rejected by this court in Case No. 04SA95 (May 6, 2004). Since Petitioners in this case have limited the grounds for their appeal to a claim that initiative #55 violates the single subject rule,), Proponents do not address this claim here.

Although it is settled that the fact that an initiative could conceivably change the status quo is not grounds for finding that the initiative violates the single subject rule, the issue of possible future interpretation of initiative # 88 is now addressed since it is proposed by Petitioners as the basis of their appeal.

The Proposed Initiative provides simply that, "except as mandated by federal law", provision of "non-emergency services" by the state of Colorado or its political subdivisions is restricted to lawful residents of the United States. In this regard it should be noted that federal law already provides that illegal aliens are "not eligible for any state or local public benefits (as defined in subsection (c) of this section)." 8 U.S.C.A. § 1621(a) (1998) (Restricting Welfare and Public Benefits for Aliens). Subsection (b) of that statute provides for certain narrow exceptions of an emergency nature, such as disaster relief, immunizations for communicable diseases, emergency medical treatment, and certain "in-kind" services as specified by the Attorney General , such as soup kitchens, short-term shelters, and the like. *Id.*

The federal statute further defines the term "state of local public benefits" as including a "grant, contract, loan, professional license provided by an agency of a state or local government...any retirement, welfare , health, disability, public or assisted

housing, post secondary education, food assistance, unemployment benefit, or any other similar benefit..." *Id.* at (c) (1)(B).

Excluded from the term "state or local public benefits" are such services as benefits defined in Section 1611(c) of the same title (including emergency medical services, disaster relief, soup kitchens, and the like), licenses provided to foreign nationals not present in the U.S., and the like. *Id.* at 1621 (c) (2).

Notably absent from the list of exclusions in the federal law are the denial of basic rights which Petitioner claims a future court interpreting the Proposed Initiative might conceivably characterize as "services", i.e., inter alia, the right to appeal a criminal conviction, file a writ of habeas corpus, access to the courts to insure against deprivation of life liberty and property, ant the like. (For a full list, see Petitioner's Motion for Rehearing at pages 1-2.)

It is inconceivable that the members of Congress who passed the federal statute restricting services to illegal immigrants intended to deprive those illegal immigrants convicted of crimes within this country of the "services" of an appellate court in reviewing their conviction, and doubtless any suggestions to the contrary would have been met with incredulity. It is equally inconceivable that this Court would so interpret the Proposed Initiative, even if this Court were to consider the possible changes in the status quo if the imitative were to become law.

To the extent that an independent analysis of the "words and phrases" in the Proposed Initiative is deemed necessary, such words should be read "in context and construed according to the rules of grammar and common usage". *In Re Title, Ballot*

Title and Submission Clause, and Summary for 1997-1998 #30, 959 P.2d 822, 825(Colo. 1998), citing *Bickel v. City of boulder*, 885 P. 2nd 215, 228 n. 10 (Colo. 1994).

In summary, it is therefore submitted that the definition of "services" set forth in federal statute 1621, *supra*, provides a useful basis upon which to define the same word in the Proposed Initiative, and it should again be noted that that definition does not include the rights to appeal or habeas corpus, access to the courts, or the right to be free from seizure of person or property without due process.

In regard to the standards for judicial review of the Title Board, it has been noted that Court is "not a gatekeeper, with the assigned task of screening proposals from the voters for lack of merit, questionable policy choices, or exceeding federal constitutional limitations. At this stage, the Court's role is limited to determining whether the board has performed its duty to insure that the proposed initiative contains a single subject and that the title and submission clauses prepared by the board express the initiative's true meaning and intent." *In Re Title, Ballot Title and Submission Clause for 2003-2004 #32 & #33, 76 P.3d 460, 471 (Colo. 2003) (Justice Coats, dissenting).*

CONCLUSION

Proponents respectfully requests that this court uphold the State Title Board's finding that the Proposed Initiative states a single subject.

Dated this 3rd day of March 2006.

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Certificate of Service

I hereby certify that on the 3rd day of March 2006, a true and correct copy of the foregoing **PROPONENT'S ANSWER BRIEF** was served via hand delivery or over night delivery service, to the following:

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