

SUPREME COURT, STATE OF COLORADO

2 East 14th Avenue  
Denver, Colorado 80203

SUPREME COURT

JUN 16 2008

OF THE STATE OF COLORADO  
SUSAN J. FESTAG, CLERK

IN RE THE MATTER OF THE TITLE, BALLOT TITLE,  
AND SUBMISSION CLAUSE FOR 2007-2008, #103  
("COLORADO HOUSING INVESTMENT FUND")

**Petitioner:**

ROBERT GOLDEN, Petitioner,

v.

**Respondents:**

NEDRA SAN FILLIPPO AND KENNETH  
HOAGLAND, Proponents,

v.

**Title Board:**

WILLIAM HOBBS, SHARON EUBANKS, AND  
DANIEL DOMENICO.

▲ COURT USE ONLY ▲

**Attorneys for Petitioner:**

Jason R. Dunn  
Brownstein Hyatt Farber Schreck LLP  
410 Seventeenth Street, Suite 2200  
Denver, CO 80202-4432  
Tel: 303.223.1100  
Fax: 303.223.1111  
[jdunn@bhfs.com](mailto:jdunn@bhfs.com)

Case Number: 08SA193

PETITIONER'S ANSWER BRIEF

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ..... ii

SUMMARY OF THE ARGUMENT ..... 1

ARGUMENT..... 2

    I.    The plain language of the measure provides funding for a wide  
        range of social services programs that bear no necessary connection  
        to increasing the quantity of affordable housing stock ..... 2

        A.    The plain language of the measure includes funding for a wide  
            range of social services ..... 3

        B.    The funding of unconnected social programs is a separate subject ..... 5

    II.   This court has previously rejected the Title Board and Proponents'  
        arguments that words cannot be a catch-phrase simply because they  
        are used in the underlying measure and that an objector must present  
        direct evidence demonstrating that voters will be improperly affected  
        by those words ..... 6

CONCLUSION..... 11

## TABLE OF AUTHORITIES

### Cases

<i>In re Title, Ballot Title and Submission Clause &amp; Summary for 1999-2000 #258(A),</i> 4 P.3d 1094 (Colo. 2000).....	7, 8
<i>Proposed Initiative Designated "Governmental Business",</i> 875 P.2d 871 (Colo. 1994).....	7
<i>In re Title, Ballot Title and Submission Clause for 1997-1998 #105,</i> 961 P.2d 1092 (Colo. 1998).....	8
<i>In re Title, Ballot Title and Submission Clause for 1999-2000 #256,</i> 12 P.3d 246 (Colo. 2000).....	10
<i>In re Title, Ballot Title and Submission Clause for 1997-1998 #112,</i> 962 P.2d 255 (Colo. 1998).....	10

### Other

<i>Audio Recording of Title Board Hearing</i> May 29, 2008 .....	4, 5, 9, 10
---	-------------

Petitioner Robert Golden, through his undersigned counsel, hereby submits this Answer Brief in response the opening briefs of the Title Board and the Proponents of Initiative 2007-2008 #103 (“Initiative #103”).

### **SUMMARY OF THE ARGUMENT**

When read together, the opening briefs of the Title Board and the Proponents are quite extraordinary. The Title Board agrees with Petitioner that the measure funds a wide range of social services unrelated to housing, such as drug treatment programs, mental health services and foreclosure mediation, but contends that such measures are properly connected to the purpose of “enhancing the ability of individuals to maintain a home.” In contrast, Proponents argue that this admittedly “wide array” of social programs are not included in the measure and therefore need not be reflected in the title. Neither argument is availing. The clear language of the measure indicates that the new tax can be used to fund a wide range of social programs unconnected to low-cost housing.

Likewise, the Title Board and Proponents’ argument regarding the title is equally unavailing, as it wholly relies on erroneous readings of this Court’s decisions involving the use of catch-phrases.

## ARGUMENT

- I. **The plain language of the measure provides funding for a wide range of social services programs that bear no necessary connection to increasing the quantity of affordable housing stock.**

Petitioner argued to the Title Board and again in his opening brief that among the range of social services funded through permanent supportive housing programs are drug and alcohol treatment, job counseling, mental health services, HIV/AIDS treatment, and childcare. As support, Petitioner provided an exhibit at the hearing and again in its opening brief detailing Colorado's permanent supportive housing program, demonstrating that such programs typically include a wide range of services.

Neither the Proponents nor the Title Board challenge the breadth of services covered by permanent supportive housing programs. The debate is only whether such programs are included in this measure, and if so, whether they constitute separate subjects beyond that of increasing the quantity of affordable housing stock. The Title Board concedes that such services are included in the measure, but argues that they are properly connected to a single subject. The Proponents take a different view, arguing that despite language in the measure to the contrary, such services were not intended to be part of the measure. Both arguments are unavailing.

**A. The plain language of the measure includes funding for a wide range of social services.**

Proponents argue in their opening brief that Petitioner misreads the measure as funding a wide range of social programs unrelated to increasing the quantity of affordable housing stock. Instead, they contend that the ten services listed in section 3(2) of the measure is an exclusive list of what can be funded. See Respondents' Answer Brief at 8. Proponents' argument, however, belies not only their own statements before the Board, but the text of the measure itself and the Title Board's understanding of it.

Section 3(2) of the measure states: "Moneys in the fund shall be used for grants and loans to support the statewide creation and preservation of **affordable housing stock . . .**" (emphasis added). "Affordable housing stock" is defined in turn as shelters, transitional housing, rental and ownership units, and "permanent supportive housing." Initiative #103 § 2(2). "Permanent supportive housing" is a term of art unique to the social services industry describing a wide range of social programs, including drug and alcohol treatment, job training, HIV/AIDS treatment, and mental health services. Thus, the text of the measure is clear: moneys in the fund can be used to support the wide range of social services commonly associated with permanent supportive housing programs. Initiative #103, §§ 2(2), 3(2).

The Title Board clearly understood the measure as encompassing these programs. In its opening brief, it concedes: "#103 does authorize funding of

social programs" through permanent supportive housing. Opening Brief of Title Board at 5. At the May 29, 2008, rehearing, Board Member Domenico stated that, "[Objector is] right that there's a lot going on here that doesn't expand the availability of affordable housing." See Audio Recording of Title Board Hearing, May 29, 2008, at 1:12.<sup>1</sup> Indeed, after a lengthy discussion acknowledging that the breadth of the measure went well beyond housing, the Title Board amended its first draft of the single subject clause in the title from funding of "affordable housing", to funding of "affordable housing *programs*" (emphasis added). While this description is still woefully inadequate, it was certainly a more accurate description of a measure that goes well beyond the funding of housing projects. Moreover, the Title Board had a lengthy debate about whether the word "affordable" should even be in the single subject clause because the measure covered such a wide range of topics unrelated to simply providing low-cost housing for the poor. Chairman Hobbs stated:

I'm just maybe a little more cautious about narrowing the single subject to 'affordable housing related purposes' . . . but it seems to me, even these things, again foreclosure and homeless prevention services and so forth, I'm just not quite there that this is necessarily limited to what I understand [affordable housing] to mean.

*Id.* at 2:14.

Proponents, on the other hand, argue in their opening brief that these social services programs are simply not covered by the measure. That argument

---

<sup>1</sup> Available at [http://www.sos.state.co.us/pubs/info\\_center/archived\\_conference.htm](http://www.sos.state.co.us/pubs/info_center/archived_conference.htm).

is in marked contrast to its position before the Title Board. At the May 29, 2008 hearing there was a lengthy discussion about whether such programs constitute a single subject. Counsel for Proponents argued that such purposes fit within a single subject, not that the measure did not encompass them. Likewise, the Chair of the Colorado Housing Coalition, when asked by counsel for the Proponents to testify about permanent supportive housing programs, spoke only to how such programs function and why they constitute a single subject within the measure, making no attempt to argue that such programs were not involved. *Id.* at 1:48 (Testimony of Britta Fisher). Clearly, the understanding of everyone at the hearing, including Proponents, was that this wide array of social services was included in the measure.

**B. The funding of unconnected social programs is a separate subject.**

As a general matter, the parties all seem to agree that permanent supportive housing is a concept that provides a large number of varied social services, commonly including drug treatment, job training, HIV/AIDS treatment, and child care. Indeed, Proponents refer to the concept as a "wide array" of social services and as a "wide range of social programs." Respondents' Opening Brief at 8,9. In recognizing the breadth of these services and arguing that such services are not covered by this measure, Proponents seem to implicitly concur that inclusion of such services in the measure would violate the single-subject requirement.



The Title Board, in contrast, argues in its opening brief that while such services are indeed covered by the measure, doing so does not violate the single subject requirement because such services are directly related to the purpose of “enhancing the ability of individuals to maintain a home.” Opening Brief of the Title Board at 5. Its hard to imagine a broader statement of a measure’s subject. Under that umbrella, virtually any financial benefit a person receives would enhance their ability to “maintain a home” and therefore fall within the single subject of the measure. Under that rationale, funds from this tax could be use to offset college tuition costs or automobile loan payments, pay for marriage counseling, cover a family’s cable television bill, or cover nearly any other expense, so long as doing so simply “enhance[d] the ability of individuals to maintain a home.” The Title Board’s statement of the single subject simply swallows the single subject rule itself and renders it meaningless.

Accordingly, none of the arguments presented by Proponents and the Title Board in their opening briefs refute Petitioner’s claim that the measure contains multiple subjects.

**II. This Court has previously rejected the Title Board and Proponents’ arguments that words cannot be a catch-phrase simply because they are used in the underlying measure and that an objector must present direct evidence demonstrating that voters will be improperly affected by those words.**

Proponents and the Title Board both argue that the phrases “affordable housing” and “affordable housing programs” are not catch-phrases because: (a)

“affordable housing” is used in the underlying measure, and (b) Petitioner has not provided evidence that such phrase will induce a favorable response from voters without adding to their understanding of the measure. Both arguments run counter to the decisions of this Court.

First, this court has never held that words cannot be a catch-phrase simply because the same language appears in the measure. Indeed, the Court has specifically held the opposite, stating that even where an underlying initiative contains the same phrase used in the title, “the Title Board is not free to include this wording if . . . it constitutes a catch phrase.” *See generally In re Title, Ballot Title and Submission Clause & Summary for 1999-2000 #258(A)*, 4 P.3d at 1100; *Proposed Initiative on “Governmental Business”*, 875 P.2d 871 (Colo. 1994) (disallowing the inclusion of a catch-phrase despite identical phrase in measure). Thus, in *1999-2000 #258(A)*, the Court held that repeating the measure’s use of “as rapidly and effectively as possible” was a catch-phrase because it masked the policy question of whether English immersion programs are the most effective way to teach English to children. *Id.* Likewise, in *Proposed Initiative Designated “Governmental Business”*, the Court rejected the parroting of “consumer protection” and “open government” in the title because the measure actually went far beyond those concepts. *Id.* Such is the case here where “affordable housing” is used in a measure that goes far beyond merely providing low-cost housing.

Second, the Title Board and the Proponents are simply incorrect that an objector must provide specific evidence to the Title Board demonstrating that a particular phrase is a catch-phrase. See Opening Brief of Title Board at 11; Respondents' Opening Brief at 13. As this Court has noted, determining whether a phrase constitutes a catch-phrase is an "imprecise process" dependent to large extent upon both the Title Board's and this Court's understanding of contemporary thought and vernacular regarding the phrase at issue. See *In re Title, Ballot Title and Submission Clause for 1997-1998 #105*, 961 P.2d 1092, 1100 (Colo. 1998); see also *1999-2000 #258(A)*, 4 P.3d at 1100. Rarely, if ever, has this Court cited particular evidence in the record as a basis for finding words a catch-phrase. Under the correct standard, an objector need only set forth a valid argument as to why a phrase will lead voters to support the measure without adding to their general understanding of the measure, or that the phrase will be used by supporters of the measure as a campaign slogan to elicit such unfounded support. See *1999-2000 #258(A)*, 4 P.3d at 1100.

As set forth in Petitioner's Opening Brief, "affordable housing" and "affordable housing programs" are such catch-phrases, particularly in light of the public's common understanding of "affordable housing" and because those slogans hide the full extent of the measure (thereby also making them unconstitutionally vague and misleading). Indeed, as discussed on pages 4 and 5 above, members of the Title Board expressed significant concern as to whether

those phrases accurately represented major provisions in the measure unrelated to low-cost housing or the average voter's understanding of "affordable housing," and whether they constitute a catch-phrase. During the hearing, Board Member Domenico commented:

Using [the phrase "affordable housing"] in this way is misleading in the sense that it really does give the impression that if you just read the title that what you are doing is raising money to help pay for housing that is affordable to low-income people, probably would be the natural interpretation of what "affordable housing" means. And there really is a lot going on here that doesn't relate to that, and the money would be used for a lot of things that that doesn't cover.

See Audio Recording of Title Board Hearing, May 29, 2008, at 1:30. Mr. Domenico went on to state: "From reading it, its not one-hundred percent clear to me that there is no way that money that is given out under the structure created by this measure could be used for anything else [besides affordable housing]." *Id.* at 2:10. Nonetheless, he concluded: "If [the objectors are] able to convince the Supreme Court that there's a bunch of money that this tax would bring in going to other housing programs that aren't really 'affordable' housing programs then the whole thing gets throw out and you guys have to start over. That's my concern. But if you guys aren't concerned about that then I'm willing to insert 'affordable' I think." *Id.* at 2:12.

Chairman Hobbs made similar comments:

I'm just concerned that it's not a clear expression of the single subject, that it reinserts the potential that there may be a catch-phrase argument, and that it might be misleading. But I know you

feel pretty strongly that you can defend it, so like Mr. Domenico says, that is something to influence us if you understand that that is a risk.

*Id.* at 2:17. Clearly, the Title Board had significant reservations about the use of "affordable housing" in the title, but deferred to Proponents insistence on leaving that language in the title and their ability to defend it before this Court. The Title Board erred in allowing Proponents wishes to cloud their judgment.

Finally, both the Title Board and Proponents argue that this Court's decisions in *In re Title, Ballot Title and Submission Clause for 1999-2000* #256, 12 P.3d 246 (Colo. 2000), and *In re Title, Ballot Title and Submission Clause for 1997-1998* #112, 962 P.2d 255 (Colo. 1998), are instructive. In those cases, the court rejected arguments that "management of growth" and "protect the environment and human health" are catch-phrases. Neither the Title Board nor the Proponents, however, explain why those phrases are similar to "affordable housing" or why they have any value in the analysis here beyond the fact that both phrases were used in the underlying measures. Indeed, both phrases were upheld in cursory fashion, with the decision upholding "protect the environment and human health" issued without opinion. Thus, neither case has any precedential or instructive value.

Accordingly, the Title Board and Proponents have failed to present a credible argument as to why Petitioner's claims regarding the title should be rejected. Thus, for the reasons set forth above and in Petitioner's Opening Brief,

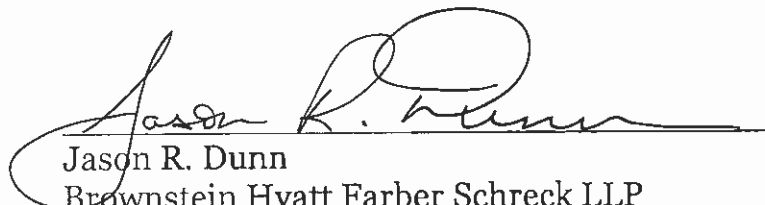
the title set by the Title Board should be reversed as containing an impermissible catch-phrase.

### CONCLUSION

The arguments set forth in the Title Board's and the Proponents' opening briefs are unavailing and should be rejected. Accordingly, the decision of the Title Board finding that Initiative #103 contains a single subject should be reversed. Alternatively, the title as set by the Title Board should be rejected as misleading, inaccurate and including an impermissible catch-phrase, and should therefore be returned to the Title Board to reset consistent with the arguments expressed in Petitioner's Opening Brief and herein.

Respectfully submitted this 16th day of June, 2008

BROWNSTEIN HYATT FARBER SCHRECK LLP

A handwritten signature in black ink, appearing to read "Jason R. Dunn", is written over a horizontal line. The signature is fluid and cursive.

Jason R. Dunn  
Brownstein Hyatt Farber Schreck LLP  
410 17<sup>th</sup> Street, #2200  
Denver, Colorado 80202  
(303) 223-1100  
(303) 223-0914  
[jdunn@bhfs.com](mailto:jdunn@bhfs.com)

Attorneys for Robert Golden

**CERTIFICATE OF SERVICE**

I hereby certify that on June 16, 2008, a true and correct copy of this  
PETITIONER'S ANSWER BRIEF was hand delivered to the following:

Blain Myhre, Esq.  
Isaacson Rosenbaum, P.C.  
633 17<sup>th</sup> Street, #2200  
Denver, Colorado 80202

Maurice Knaizer, Esq.  
Assistant Attorney General  
1525 Sherman Street, 7<sup>th</sup> Floor  
Denver, CO 80203

