

<p>Supreme Court, State of Colorado Court Address: Colorado State Judicial Building 2 East 14th Avenue, Suite 400 Denver, CO 80203</p>	<p>FILED IN THE SUPREME COURT</p> <p>JUN 05 2008</p>
<p>ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2007) Appeal from the Ballot Title Setting Board</p> <p>IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2007-2008 #123</p>	<p>OF THE STATE OF COLORADO SUSAN J. FESTAS, CLERK</p>
<p>Petitioners:</p> <p>REED NORWOOD AND CHARLES BADER, Proponents,</p> <p>v.</p> <p>Respondent: JULIAN JAY COLE, Objector,</p> <p>and</p> <p>Title Board: WILLIAM A. HOBBS, DAN CARTIN, and DAN DOMENICO</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorney: Mark G. Grueskin Isaacson Rosenbaum P.C. 633 17th Street, Suite 2200 Denver, Colorado 80202</p> <p>Phone Number: (303) 292-5656 FAX Number: (303) 292-3152 E-mail: mgrueskin@ir-law.com Atty. Reg. #: 14621</p>	<p>Case Number:</p> <p>08SA199</p>
<p>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2007-2008 #123</p>	

Petitioners Reed Norwood and Charles Bader (hereafter "Petitioners"), registered electors of the State of Colorado, hereby submit this petition for review to appeal the decision of the State Title Board in setting the title for Proposed Initiative 2007-2008 #123.

STATEMENT OF THE CASE

A. Procedural History of Initiative #123.

Petitioners proposed Initiative 2007-2008 #123. The measure prohibits employers, as a condition of employment, from requiring that employees associate with certain organizations addressed as "labor organizations," defines "labor organization," and provides that Initiative #123 would prevail over any conflicting measure on the 2008 ballot, regardless of the number of votes cast for such measures. A review and comment hearing was held on May 9 before designated representatives of the Offices of Legislative Council and Legislative Legal Services to address certain technical and substantive questions dealing with this proposal.

On May 9, Petitioners submitted a final version of Initiative #123 to the Secretary of State, Exhibit A, and the Title Board held a hearing on May 21, 2008 to establish the initiative's single subject and set a title. Julian Jay Cole, Objector, filed a Motion for Rehearing alleging lack of jurisdiction, based upon changes to the draft initiative that exceeded the scope of the legislative review and comment

memo and alleged violations of the single subject requirement. Cole also objected to the accuracy of the title set. Colo. Const., art. V, sec. 1(5.5). In response to the Motion for Rehearing and oral argument, the Title Board rejected the allegation that substantial changes were made to the initiative draft that were not made in response to comments of the legislative staff. As to single subject, though, the Board changed its previous decision that the initiative was one topic by a two-to-one vote. The two Board members voting in the majority had different reasons for their conclusion that this measure violated single subject requirements. Because of the Board's single subject decision, no adjustments to the wording of the ballot title were considered or approved.

B. Jurisdiction.

Pursuant to § 1-40-107(2), C.R.S., any person who submits a motion for rehearing to the Title Board or any person who appears before the Board in connection with such motion may appeal the decision on the Title to this Court. Such appeal must contain certified copies of proposed initiative, the motion for rehearing, and the title set, *see* Exhibit A attached hereto, and must be within five days of the Board's decision. That time period excludes a weekend that intervenes between the Board meeting and the expiration of the five-day period. Matter of Title, Ballot Title and Submission Clause, and Summary for 1997-98 #62, 961 P.2d 1077, 1079 (Colo. 1998). Therefore, this appeal is timely filed.

GROUNDNS FOR APPEAL

The Title Board should have set a ballot title for #123, and its failure to do so was in error. The following is an advisory list of issues to be addressed in Petitioners' brief:

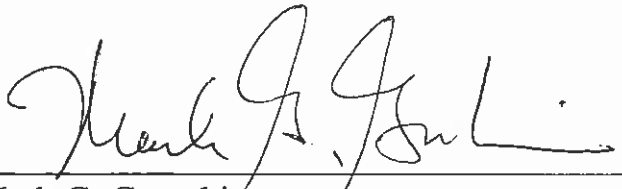
1. After deciding at the first hearing that the measure comprises a single subject, the Title Board erred in reversing that ruling and in failing to find that the initiative addresses one topic: limiting the conditions of employment as to certain organizations defined in the measure as "labor organizations."
2. The single subject requirement does not prevent an initiative from having an effect that is potentially inconsistent with another measure on the same ballot, regardless of the number of votes received by either measure.
3. The single subject requirement does not prevent an initiative from specifying that it will prevail over any conflicting definition in the constitutional article being amended, including one in a measure on the same ballot, regardless of the number of votes cast for each.
4. The ballot title originally set by the Board accurately and fairly reflected the intent of the measure.

PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the title set for Initiative #123 comprised a single subject and that the title set by the Title Board be approved by the Court or, in the alternative, that the title set by the Board be amended in such manner as the Court deems appropriate.

Respectfully submitted this 5th day of June, 2008.

ISAACSON ROSENBAUM P.C.

By: 
Mark G. Grueskin

ATTORNEYS FOR PETITIONERS

Petitioners' addresses:

8071 S. Lamar Street
Littleton, CO 80128-5890

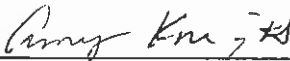
4859 Herndon Circle
Colorado Springs, CO 80920-7051

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of June, 2008, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2007-2008 #123** was served via facsimile and placed in the United States mail, postage prepaid, to the following:

Scott Gessler
Hackstaff Gessler LLC
1601 Blake Street, Suite 310
Denver, Colorado 80202

Maurice G. Knaizer, Esq.
Deputy Attorney General
Colorado Department of Law
1525 Sherman Street, 6th Floor
Denver, CO 80203





STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **MIKE COFFMAN**, 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 "2007-2008 #123".....

.....

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 5th day of June, 2008.

A handwritten signature in cursive script that reads "Mike Coffman".

SECRETARY OF STATE

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MAY 10 2008

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SECRETARY OF STATE

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FINAL

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

SECTION 1. Article XVIII of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

Section 17. Limits on conditions of employment. (1) AN EMPLOYER SHALL NOT REQUIRE, AS A CONDITION OF EMPLOYMENT, THAT AN EMPLOYEE JOIN OR PAY DUES, ASSESSMENTS, OR OTHER CHARGES TO OR FOR A LABOR ORGANIZATION.

(2) AS USED SOLELY IN THIS ARTICLE, AND NOTWITHSTANDING ANY OTHER PROVISION OF LAW, "LABOR ORGANIZATION" MEANS ANY ORGANIZATION OF EMPLOYEES THAT EXISTS SOLELY OR PRIMARILY FOR A PURPOSE OTHER THAN DEALING WITH EMPLOYERS CONCERNING GRIEVANCES, LABOR DISPUTES, WAGES, RATES OF PAY, EMPLOYEE BENEFITS, HOURS OF EMPLOYMENT, OR CONDITIONS OF WORK. THIS DEFINITION SHALL PREVAIL OVER ANY CONFLICTING DEFINITION OF "LABOR ORGANIZATION" IN ARTICLE XVIII OF THIS CONSTITUTION, INCLUDING ANY PROVISION ADOPTED AT THE 2008 GENERAL ELECTION, REGARDLESS OF THE NUMBER OF VOTES RECEIVED BY THIS OR ANY OTHER SUCH AMENDMENT.

Reed Norwood
8071 S. Lamar Street
Littleton, CO 80128

Charles Bader
4859 Herndon Circle
Colorado Springs, CO 80920-7051

May 9, 2008

RECEIVED
MAY 09 2008 (M) 2:51 PM
ELECTIONS
SECRETARY OF STATE

via **HAND DELIVERY**

Ms. Cesi Gomez
Colorado Secretary of State
1700 Broadway, Suite 270
Denver, Colorado 80290

Re: Initiative 2007-2008 #123
Initiative 2007-2008 #124

Dear Ms. Gomez:

Attached please find the required drafts of Initiative 2007-2008 #123 and 2007-2008 #124 which our office is filing on behalf of the Proponents for each measure.

Sincerely,



Amy Knight
Legal Assistant to Mark G. Grueskin

aak
enclosure
1830720_1.doc

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MAY 28 2008

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SECRETARY OF STATE

COLORADO TITLE SETTING BOARD

In re Title and Ballot Title and Submission Clause for Initiative 2007-2008 #123

MOTION FOR REHEARING

On behalf of Julian Jay Cole, a registered elector of the State of Colorado, the undersigned hereby moves for a rehearing of the title, ballot title, and submission clause for Initiative 2007-2008 #123 "Conditions of Employment", set by the Title Board on May 21, 2008. As grounds, Cole states as follows:

The Title Board does not have jurisdiction to set a title because the final version of the initiative, as filed with the Title Board, contains a substantive change from the version of the initiative filed with legislative council and the office of legislative legal services, and the change was not properly in response to a comment from legislative council and the office of legislative legal services in violation of C.R.S. § 1-45-105(2).

The proposed initiative violates Colorado's single subject requirement contained in C.R.S. § 1-40-106.5 because it contains the following separate subjects:

1. The initiative states what cannot be defined as a labor organization.
2. The initiative states that an employer cannot, as a condition of employment, belong to an undefined category of organizations labeled "labor organizations."
3. The initiative purports to apply to all current or future usages of the term "labor organization" in Article XVIII of the Colorado Constitution, regardless of the manner in which the term "labor organization" may be used in that Article.
4. The initiative creates new rules for resolving conflicts between this initiative and other initiatives appearing on the 2008 statewide ballot.

The title set by the Board is misleading, inaccurate, and incomplete for the following reasons:

1. The title misleadingly states that it applies to participation to "certain" organizations as a condition of employment, when in fact the initiative does not apply to "certain" organizations.
2. The title is confusingly similar to the title for Proposed Initiative No. 41, currently

certified for the ballot as Amendment 47.

3. The title is confusingly similar to the title for Proposed Initiative No. 124.
4. The title is misleading, because it states that the single subject concerns participation in certain organization as a condition of employment, when in fact the single subject of the initiative is to redefine the term "labor organization" in a manner contrary to previous definitions and contrary to normal language usage.
5. The title is misleading, because the initiative does not define a labor organization, but rather defines what a labor organization is not.
6. The title is incomplete and misleading, because it does not inform voters that the use of the term "labor organization" directly contradicts other usages of the term in Colorado law.

Respectfully submitted this 28th day of May, 2008.

By: 

Scott E. Gessler, Reg. No. 28944

Hackstaff Gessler LLC

1601 Blake St., Suite 310

Denver, Colorado 80202

(303) 534-4317

(303) 534-4309 (fax)

sgessler@hackstaffgessler.com

Attorney for Julian Jay Cole

Address of Petitioner:
18977 W. 55th Cir.
Golden, CO 80403

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of May, 2008, a true and correct copy of the foregoing **MOTION FOR REHEARING** was placed in the United States mail, postage prepaid, to the following:

Mark Grueskin, Esq.
Isaacson Rosenbaum P.C.
633 17th Street
Suite 2200
Denver, Colorado 80202



Cesiah Gomez

From: Barbora Hurd [bhurd@hackstaffgessler.com]
Sent: Wednesday, May 28, 2008 4:49 PM
To: Cesiah Gomez
Cc: 'Scott Gessler'; general@hackstaffgessler.com
Subject: Motions for Rehearing (#113, #123, #124)
Attachments: Motions for Rehearing 113, 123, 124.pdf

Dear Cesi,

Attached please find motions for rehearing regarding ballot initiative # 113, #123 and #124. The originals will be couriered to your office tomorrow morning. Please do not hesitate to call if you have any questions or need additional information.

Sincerely,

Barbora Hurd
Paralegal to Scott E. Gessler, Esq.

Hackstaff Gessler, LLC
1601 Blake Street, Suite 310
Denver, Colorado 80202

ph. (303) 534-4317
fax (303) 534-4309
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Ballot Title Setting Board

Proposed Initiative 2007-2008 #123¹

Hearing May 21, 2008:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 9:44 a.m.

Hearing May 30, 2008:

Motion for Rehearing granted; title setting denied on the basis that the measure does not constitute a single subject.

Hearing adjourned 11:00 a.m.

¹ Unofficially captioned "Conditions of Employment" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.