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| <p>SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203</p> | <p>FILED IN THE SUPREME COURT OCT 15 2007 OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK</p> <p>▲ COURT USE ONLY ▲</p> |
| <p>ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), 1 C.R.S (2007)</p> | |
| <p>IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2007- 2008, #40 PAGE PENK, Petitioner, v. MIKE COFFMAN, SECRETARY OF STATE; AND DAN DOMENICO, WILLIAM A. HOBBS, AND DAN CARTIN, TITLE BOARD, Respondents.</p> | <p>Case No.: 07 SA 288</p> |
| <p>JOHN W. SUTHERS, Attorney General MAURICE G. KNAIZER, Deputy Attorney General* 1525 Sherman Street, 7th Floor Denver, CO 80203 (303)-866-5380 Registration Number: 05264 *Counsel of Record</p> | |
| <p>OPENING BRIEF OF TITLE BOARD AND SECRETARY OF STATE</p> | |

TABLE OF CONTENTS

| | PAGE |
|-------------------------------|-------------|
| STATEMENT OF THE ISSUES..... | 1 |
| STATEMENT OF THE CASE..... | 1 |
| STATEMENT OF THE FACTS..... | 1 |
| SUMMARY OF THE ARGUMENT | 2 |
| ARGUMENT | 2 |
| CONCLUSION..... | 4 |

TABLE OF AUTHORITIES

PAGE

CASES

In re Title, Ballot Title and Submission Clause and Summary for 1999-2000
No. 215, 3 P.3d 11 (Colo. 2000)..... 3

In re Title, Ballot Title and Submission Clause and Summary for the
Proposed Initiated Constitutional Amendment “Concerning Suits Against
Nongovernmental Employers Who Knowingly and Recklessly Maintain
an Unsafe Workplace (“Unsafe Workplace”), 898 P.2d 1071 (Colo. 1995). 3

In re Title, Ballot Title and Submission Clause for Proposed Initiatives
2001-2002 #21 and #22, 44 P.3d 213 (Colo. 2002) 2

In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000
#235(a), 3 P.3d 1219 (Colo. 2000)..... 2

In the Matter of the Title, Ballot Title and Submission Clause for 2005-2006,
#82, 06 SA 144 3

CONSTITUTIONS

Colo. Const. art. XXVI 3

Colo. Const. art. XXX..... 1, 3

STATUTES

§ 1-40-106(3)(b), C.R.S. (2007) 2

§ 24-21-105, C.R.S. (2007)..... 4

Dan Domenico, William A. Hobbs and Dan Cartin, in their capacities as members of the Title Board (hereinafter Board), and Mike Coffman, in his capacity as Secretary of State hereby submit their Opening Brief.

STATEMENT OF THE ISSUES

Do the titles set by the Board fairly and accurately describe the measure?

STATEMENT OF THE CASE

On August 20, 2007 the proponent submitted proposed initiative #40 to the Secretary of State for title setting. The title setting hearing on the proposed initiative was held on September 5, 2007. The Board set titles. On September 11, 2007, the proponent filed a motion for rehearing on the ground that the titles set by the board were “incorrect”. The Board reviewed the motion for rehearing on September 19, 2007 and amended the titles. The proponent filed an appeal with this Court. A copy of the record of the proceedings before the Board is attached.

STATEMENT OF THE FACTS

The proponent seeks to add a provision to Constitution providing, “‘PEACE IS POSSIBLE’ shall be the soul words of Article XXX of the Colorado Constitution.” The title set by the Board states: “An amendment adding ‘peace is

possible' to the Colorado constitution." The ballot title and submission clause contain the same language stated in the form of a question.

The proponent claims that the titles are incorrect.

SUMMARY OF THE ARGUMENT

The titles set by the Board fairly and accurately describe the measure.

ARGUMENT

When setting the titles, the Board must "correctly and fairly express the true intent and meaning" of the proposed initiative and must "consider the public confusion that might be caused by misleading titles." Section 1-40-106(3)(b), C.R.S. (2007). The titles must unambiguously state the principal features of the initiative. The Board's decisions are presumptively valid. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #235(a)*, 3 P.3d 1219, 1225 (Colo. 2000). The Board has broad discretion in the exercise of its drafting authority. *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002 #21 and #22*, 44 P.3d 213, 219 (Colo. 2002). Titles that repeat the operative language of the measure and express the measure's true intent and meaning will be approved by the Court. *In re Title, Ballot Title and Submission Clause and Summary for the Proposed Initiated Constitutional Amendment*

“Concerning Suits Against Nongovernmental Employers Who Knowingly and Recklessly Maintain an Unsafe Workplace (“Unsafe Workplace”), 898 P.2d 1071, 1074 (Colo. 1995). The Court will reject the language of the Board “only if it is misleading, inaccurate, or fails to reflect the central features of the proposed measure.” *In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 No. 215,* 3 P.3d 11, 14 (Colo. 2000).

Although it is possible to write the titles in a different way, the Court should not order the Board to do so. The titles set by the Board fairly and accurately reflect the content of the measure. The measure states, “peace is possible”, and provides that these three words “shall be the soul words of Article XXX of the Colorado Constitution.” The titles clearly convey the meaning of the measure.

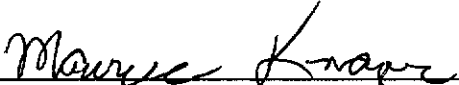
The measure here is similar to a measure submitted by the same proponent in 2006. *In the Matter of the Title, Ballot Title and Submission Clause for 2005-2006, #82, 06 SA 144.* In that case, the proponent proposed to amend Colo. const. art. XXVI by adding the sentence “PEACE IS POSSIBLE.” The ballot title and submission clause stated, “Shall there be an amendment to article XXVI of the Colorado constitution concerning a declaration that peace is possible.” This Court affirmed the titles.

Finally, the Secretary of State is not a proper party to this action. The Secretary did not participate in the title setting process. William Hobbs, the Deputy Secretary of State, is the Secretary's designee on the Board and has full authority to act on the Secretary's behalf when so designated. Section 24-21-105, C.R.S. (2007).

CONCLUSION

The Court must approve the titles set by the Board.


JOHN W. SUTHERS
Attorney General


MAURICE G. KNAIZER, 05264*
Deputy Attorney General
Public Officials
State Services Section
Attorneys for Title Board
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **OPENING BRIEF OF
TITLE BOARD AND SECRETARY OF STATE** upon all parties herein by
depositing copies of same in the United States mail, Express Mail, at Denver,
Colorado, this 15th day of October 2007 addressed as follows:

Page Penk
1304 South Parker Road, PH 17
Denver, Colorado 80231



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



STATE OF COLORADO

DEPARTMENT OF
STATE

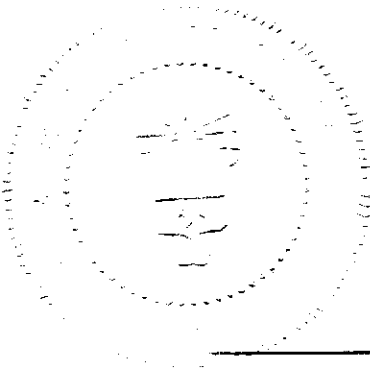
CERTIFICATE

I, **MIKE COFFMAN**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the official file thereon of the Title Board on Proposed Initiative "2007-2008 #40".....

.....

..... **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 October, 2007.



A handwritten signature in black ink that reads "Mike Coffman".

SECRETARY OF STATE

To the Colorado Secretary of State,

Sept. 21, 2007

As the proponent of Proposition #40 2007-2008, I request proper paperwork to appeal Title Board rehearing decision of Sept 19, 2007 to Colorado Supreme Court.

Thank you

Page Park
1304 S Parker Rd PH 17
Denver, CO
80231

RECEIVED
SEP 21 2007
ELECTIONS / LICENSING
SECRETARY OF STATE

Ballot Title Setting Board

Proposed Initiative 2007-2008 #40¹

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

An amendment adding "Peace is Possible" to the Colorado constitution.

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

Shall there be an amendment adding "Peace is Possible" to the Colorado constitution?

Hearing September 5, 2007:

Single subject approved; staff draft adopted; titles set.

Hearing adjourned 9:17 a.m.

Hearing September 19, 2007:

Motion for Rehearing granted to the extent Board amended titles.

Hearing adjourned 3:26 p.m.

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

FROM THE DESK OF: Mr. Page Penk


1304 S. Parker Rd PH 17, Denver, CO 80231
303.283.7913

September 11th, 2007

To the Colorado Secretary of State and the Colorado Title Board,

As the proponent of Proposition #40, I respectfully request a rehearing by the Title Board in response to the incorrect title they set on September 5th, 2007 at the original hearing.

Respectfully submitted,


Page Penk
citizen/taxpayer

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SEP 11 2007

ELECTIONS / LICENSING
SECRETARY OF STATE

*W. D. B. M.
(E)*

Ballot Title Setting Board

Proposed Initiative 2007-2008 #40¹

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

An amendment to the Colorado constitution concerning a declaration that peace is possible.

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

Shall there be an amendment to the Colorado constitution concerning a declaration that peace is possible?

Hearing September 5, 2007:

Single subject approved; staff draft adopted; titles set.

Hearing adjourned 9:17 a.m.

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

Page Penk
1304 s. Parker Rd. PH 17
Arapahoe County, Colorado 80231
303-283-7913

Chester Penk
1304 S. Parker Rd. PH 17
Arapahoe County, Colorado 80231
303-283-7913

J.
NO changes from original
BE it Enacted by the People of the State of Colorado:

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AUG 30 2007 #VH

ELECTIONS / LICENSING
SECRETARY OF STATE

"PEACE IS POSSIBLE" shall be the soul words of Article XXX of the Colorado Constitution."

August 6th, 2007

Page Penk
1304 S. Parker Rd. PH 17
Arapahoe County, Colorado
80231
303.283.7913

Chester Penk
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Arapahoe County, Colorado
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303.283.7913

#VH
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AUG 20 2007

ELECTIONS / LICENSING
SECRETARY OF STATE

10:04am

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AUG - 6 2007
#40 R Jones
COLORADO
LEGISLATIVE COUNCIL

RECEIVED STATE OF COLORADO

AUG 20 2007

Colorado General Assembly

10:04 AM
ELECTIONS / LICENSING
SECRETARY OF STATE
Kirk Miinek, Director
Legislative Council Staff



Charles W. Pike, Director
Office of Legislative Legal Services

Colorado Legislative Council
029 State Capitol Building
Denver, Colorado 80203-1784
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091 State Capitol Building
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MEMORANDUM

August 20, 2007

TO: Page Penk and Chester Penk

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #40, concerning peace

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purpose of the proposed amendment appears to be:

1. To amend the Colorado constitution by adding a new article XXX that would declare that peace is possible.

Comments and Questions

The form and substance of the proposed initiative raise the following comments and questions:

Technical questions:

1. To conform to standard drafting practices, would the proponents consider rewriting the text of the proposed initiative as follows:

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

The constitution of the state of Colorado is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE XXX

Section 1. PEACE IS POSSIBLE."?

2. To conform to standard drafting practices, would the proponents consider naming the new article in capital letters below the article number? For example:

ARTICLE XXX
PEACE

3. Do the proponents intend that the word "soul," which would be eliminated if the proponents choose to amend the proposed initiative to conform to standard drafting practices as suggested, mean "only"? If so, the correct spelling is "sole."
4. It is unclear whether the proponents intend for the language of the proposed article XXX to read "PEACE IS POSSIBLE shall be the soul words of Article XXX of the Colorado Constitution" or rather that the proposed article XXX only contain the words "PEACE IS POSSIBLE." Would the proponents clarify their intent on the language for the proposed article XXX?

Substantive questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires each initiative to have a single subject. What is the single subject of the proposed initiative?
2. Is the proposed initiative intended to have any legal effect (i.e., to establish or affect any legal rights or impose any legal obligations on any person or entity) or is it simply intended to describe the prospects for peace or to refute any unspoken assumptions one or more persons may have regarding the impossibility of peace?
3. Typical dictionary definitions of the word "peace" include: (1) The absence of war or other hostilities; (2) An agreement or treaty to end hostilities; (3) Freedom from quarrels or disagreement: harmonious relations; (4) Public security and order; and (5) Inner contentment: serenity. What meaning do the proponents ascribe to the word "peace" for purposes of the proposed initiative?