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<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 #57 JOSEPH B. BLAKE, OBJECTOR,  Petitioner,  v.  JOANNE KING AND LARRY ELLINGSON, PROponents; AND WILLIAM A. HOBBS, DANIEL L. CARTIN AND DANIEL DOMENICO, TITLE BOARD,  Respondents.</p>	<p>▲ <b>COURT USE ONLY</b> ▲</p>
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<p><b>ANSWER BRIEF OF TITLE BOARD</b></p>	

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The Title Board (“Board”), by and through undersigned counsel, hereby submits its Answer Brief. The statement of the issues, statement of the case, statement of facts and summary of the argument are set forth in the Board’s Opening Brief.

## **ARGUMENT**

### **I. #57 has only one subject.**

It is important to first analyze the scope of the measure #57. In contradistinction to most other initiative proposals, #57 does not add an entirely new law. Instead, it seeks to amend an existing law, § 18-1-606, C.R.S. (2007). This statute describes circumstances under which a business may be held criminally liable. Under the present version of the statute, a business may be held criminally liable if “ (a) The conduct constituting the criminal offense consists of an omission to discharge a specific duty or affirmative performance imposed on the business entity by law; or (b) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or knowingly tolerated by the governing body or individual authorized to manage the affairs of the business entity or by a high managerial agent acting within the scope of his or her employment or in behalf of the business entity.” Section 18-1-606(1), C.R.S. (2007). The law defines the terms “agent”, “high managerial agent” and “business

entity.” Section 18-1-606(2), C.R.S. (2007). The statute then establishes penalties that may be imposed on the businesses. Section 18-1-606(3), C.R.S. (2007).

Under present law, the business as an entity, but not its agents or high managerial agents, are culpable.

#57 proposes to extend criminal liability to agents or high managerial agents of a particular business. It allows these individuals to assert, as an affirmative defense, that they reported any violations to the attorney general prior to being charged. It also allows Colorado residents to sue for damages on behalf of the state. Any damages collected must be forwarded to the state. The individuals suing on behalf of the state would be allowed to recoup attorney’s fees and costs.

The single subject is the criminal liability for the conduct of business. All of the provisions are connected to the single subject. The businesses have always been liable under the law. The measure merely extends liability to persons who are integrally involved in the conduct of business activities. The defenses that can be asserted by these agents and high managerial agents, as well as the penalties related to their conduct, all relate to criminal liability for conduct of business.

Contrary to Objector’s assertion (Objector’s Opening Brief, p. 9), the measure does not add new crimes. It merely extends offenses described in existing law to agents or high managerial agents. In addition, the law itself does not

describe or define crimes or offenses. It states that a business, agent or high managerial agent is guilty of an offense if the conduct constitutes an offense. *See, People v. Thoro Products Inc.*, 45 P.3d 737, 746 (Colo. App. 2001), *aff'd People v. Thoro Products, Inc.* 70 P.3d 1188 (Colo. 2003); *People v. Nygren*, 696 P.2d 270, 271, n.4 (Colo. App. 1985).

Objector also asserts that the civil remedy constitutes a different subject (Objector's Brief, p. 11-12.) Under Objector's analysis, the measure extends standing to individual citizens. This argument assumes that citizens would be suing on their own behalf. This assumption is incorrect. Citizens would sue on behalf of the state. Any damages would be forwarded to the state treasury. The government would still be the real party in interest. The measure merely expands the category of persons who can act on behalf of the state to include Colorado residents.

Objector contends that the exemption of any damages from the spending limits in § 24-75-201.1, C.R.S. (2007) and the limits of Colo. Const. art. X, § 20 constitutes a separate subject. (Objector's Brief, p. 13) There are two simple responses. First, any damages awarded are not subject to the limits set forth in art. X, § 20 because that section already exempts damages. Colo. Const. art. X, § 20(2)(e). Thus, the measure does not modify or change existing law.

Second, exempting damages from the limits in § 24-75-201.1 does not create a second subject. Like art. X, § 20, this statutory provision creates limits on expenditures. However, a substantive bill which creates a revenue source and then designates the manner of expenditure and the amount that can be spent does not create multiple subjects. *Colorado General Assembly v. Owens*, 136 P.2d 262, 274 (Colo. 2006). *See also, In re Initiative Petition No. 363, State Question No. 672*, 927 P.2d 558, 566 (Okla. 1996) (“the elements of taxability, distribution of gaming revenue and of civil liability for debts incurred in gaming to be authorized are germane to the general subject of legalization and regulation of authorized casino gambling”); *Kennedy Wholesale, Inc. v. State Board of Equalization*, 806 P.2d 1360, 1367 (Cal. 1991) (allocation of cigarette tax to matters not related to health problems caused by cigarettes does not violate single subject rule.)<sup>1</sup>

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<sup>1</sup> Most of Objector’s argument focuses on the alleged unfairness of the attorney’s fees provision. This concern relates to the legal or policy implications of the law, subjects which are not pertinent to the single subject analysis. *In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 No. 200A*, 992 P.2d 27, 31 (Colo. 2000).

## **II. The titles are fair, clear and accurate.**

Objector claims that the titles do not clearly reflect the reclassification of civil actions as criminal. (Objector's Brief, p. 17.) As noted, neither the present version of the law nor this new measure classifies any actions as crimes.

Objector also contends that the titles imply that the directors, officers and employees are not subject to civil damages because the titles mention only agents when discussing civil damages. (Objector's Brief, p. 18.) The argument must be rejected. Section (5)(a) of the measure states that civil damages may be sought against "any business entity, agent or high managerial agent" for specified conduct. The titles state that any Colorado resident may "bring an action for civil damages against a business or its agent for such criminal conduct." The titles state the operative words in the measure. As such, the titles accurately reflect the measure. *In re Title, Ballot Title and Submission Clause and Summary Adopted April 4, 1990, Pertaining to the Proposed Initiative On Surface Mining*, 797 P.2d 1275, 1280 (Colo. 1990) (*Surface Mining*).

Objector also asserts that the titles fail to disclose the elements of the affirmative defense. (Objector's Brief, p. 18) However, this is not an essential detail. It is sufficient to know that that an affirmative defense exists. Likewise the failure to indicate that the term "resident" is not defined is not required. The titles



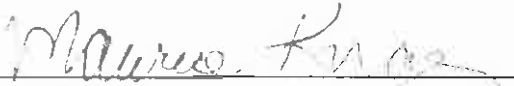
are required to disclose the content of the measure. It is not necessary or appropriate to discuss matters not discussed in the measure. *Surface Mining*, 797 P.2d at 1279.

Finally, Objector claims that the titles are misleading because they imply that the residents who bring the suit will be allowed to keep the damages. (Objector's Brief, p. 19.) This argument ignores the portion of the titles that state the measure requires "awards of damages to the general fund of the state of Colorado."

### CONCLUSION

For the reasons stated in the Board's briefs, the Court must affirm the Board's decision to set the titles.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **ANSWER BRIEF OF TITLE BOARD** upon all parties herein by depositing copies of same, overnight by DHL at Denver, Colorado, this 21st day of April 2008 addressed as follows:

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