

SUPREME COURT OF COLORADO

2 East 14th Avenue 4th Floor
Denver, Colorado 80203

ORIGINAL PROCEEDING PURSUANT TO
§ 1-40-107(2), C.R.S. (2007)
Appeal from the Ballot Title Setting Board

IN THE MATTER OF THE TITLE, BALLOT TITLE
AND SUBMISSION CLAUSE FOR 2007-2008, #73

Petitioner:

JOSEPH B. BLAKE,
Objector,

v.

Respondents:

JOANNE KING AND LARRY ELLINGSON,
Proponents,

and

Title Board:

WILLIAM A. HOBBS, DANIEL L. CARTIN, and
DANIEL DOMENICO.

Attorneys for Petitioner:

Douglas J. Friednash, #18128
John M. Tanner #16233
Susan F. Fisher, #33174
Fairfield and Woods, P.C.
1700 Lincoln Street, Suite 2400
Denver, Colorado 80203
Phone: (303) 830-2400
Facsimile: (303) 830-1033

FILED IN THE
SUPREME COURT

APR 09 2008

OF THE STATE OF COLORADO
SUSAN J. FESTAG, CLERK

▲ COURT USE ONLY ▲

Case No.

08SA118

**PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE
SETTING BOARD CONCERNING PROPOSED INITIATIVE 2007-2008
#73 ("CRIMINAL CONDUCT BY BUSINESSES - LIABILITY")**

Petitioner Joseph B. Blake (hereinafter "Petitioner"), a registered elector of the State of Colorado, through his counsel, Fairfield and Woods, P.C., respectfully petitions this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Ballot Title Setting Board ("Title Board") with respect to the setting of the title, ballot title, and submission clause for Proposed Initiative 2007-2008 #73 ("Criminal Conduct by Businesses – Liability").

I. Actions of the Ballot Title Setting Board

The Title Board conducted its initial public meeting and set title for Proposed Initiative 2007-2008 #73 on March 19, 2008. Petitioner filed a Motion for Rehearing, pursuant to C.R.S. § 1-40-107(2), on March 26, 2008. The Motion for Rehearing was heard at the next meeting of the Title Board on April 2, 2008. At the rehearing, the Title Board denied Petitioner's Motion for Rehearing. Petitioner hereby seeks a review of the final action of the Title Board with regard to Proposed Initiative 2001-2008 #73 ("Criminal Conduct by Businesses – Liability").

II. Issues Presented

1. Whether the proposed initiative violates the single subject requirement of Colo. Const. art. V, § 1(5.5) and Colo. Rev. Stat. § 1-40-106 and § 1-40-106.5,

and amends or repeals unrelated provisions of the constitution and further creating unprecedented restrictions on substantive and procedural rights.

2. Whether the initiative's title, ballot title, and submission clause are misleading, confusing, insufficient, unclear, and fail to reflect the initiative's true meaning and intent.

III. Supporting Documentation

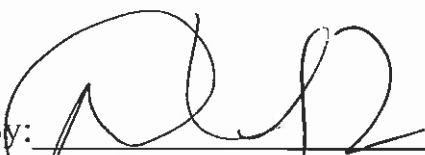
As required by C.R.S. § 1-40-107(2), a certified copy of the Petition, with the titles and submission clause of the proposed initiative, together with a certified copy of the Motion for Rehearing and the rulings thereon, are submitted with this Petition.

IV. Relief Requested

Petitioner respectfully requests this Court to reverse the actions of the Title Board with directions to decline to set a title and return the Proposed Initiative 2007-2008 #73 ("Criminal Conduct by Businesses – Liability") to the proponents.

Respectfully submitted this 9th day of April, 2008.

FAIRFIELD AND WOODS, P.C.

By: 
Douglas J. Friednash, #18128
John M. Tanner #16233
Susan F. Fisher, #33174


Petitioner's Address:
1445 Market Street
Denver, CO 80202

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of April, 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 #73 ("CRIMINAL CONDUCT BY BUSINESSES – LIABILITY")** was placed in the United States mail, postage prepaid, to the following:

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

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



Monica Houston



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 #73".....

..... **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 7th day of April, 2008.

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

SECRETARY OF STATE

RECEIVED

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Proposed Initiative
2007-2008 #73
FINAL

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

SECTION 1. Section 18-1-606, Colorado Revised Statutes, is amended to read:

18-1-606. Liability for criminal conduct by businesses.

(1) A business entity is guilty of an offense if:

(a) The conduct constituting the offense consists of an omission to discharge a specific duty of 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.

(1.5) AN EXECUTIVE OFFICIAL IS GUILTY OF AN OFFENSE IF THE CONDUCT CONSTITUTING THE OFFENSE CONSISTS OF AN OMISSION TO DISCHARGE A SPECIFIC DUTY OF AFFIRMATIVE PERFORMANCE IMPOSED ON THE BUSINESS ENTITY BY LAW AND THE EXECUTIVE OFFICIAL KNEW OF THE SPECIFIC DUTY TO BE PERFORMED AND KNEW THAT THE BUSINESS ENTITY FAILED TO PERFORM THAT DUTY.

(2) As used in this section:

(a) "Agent" means any director, officer, or employee of a business entity, or any other person who is authorized to act in behalf of the business entity, and "high managerial agent" means an officer of a business entity or any other agent in a position of comparable authority with respect to the formulation of the business entity's policy or the supervision in a managerial capacity of subordinate employees.

(b) "Business entity" means a corporation or other entity that is subject to the provisions of title 7, C.R.S.; foreign corporations qualified to do business in this state pursuant to article 115 of title 7, C.R.S., specifically including federally chartered or authorized financial institutions; a corporation or other entity that is subject to the provisions of title 11, C.R.S.; or a sole proprietorship or other association or group of individuals doing business in the state.

(c) "EXECUTIVE OFFICIAL" MEANS ANY NATURAL PERSON WHO IS AN OFFICER, DIRECTOR, MANAGING PARTNER, MANAGING MEMBER, OR SOLE PROPRIETOR OF A BUSINESS ENTITY.

(3) Every offense committed by a corporation prior to July 1, 1985, which would be a felony if committed by an individual shall subject the corporation to the payment of a fine of not less than one thousand dollars nor more than fifteen thousand dollars. For such offenses committed on or after July 1, 1985, the corporation shall be subject to the payment of a fine within the presumptive ranges authorized by section 18-1.3-401 (1) (a) (III). Every offense committed by a

corporation which would be a misdemeanor or petty offense if committed by an individual shall subject the corporation to the payment of a fine within the minimum and maximum fines authorized by sections 18-1.3-501 and 18-1.3-503 for the particular offense of which the corporation is convicted. For an offense committed on or after July 1, 2003, a business entity shall be subject to the payment of a fine within the presumptive ranges authorized by section 18-1.3-401 (1) (a) (III). An offense committed by a business entity that would be a misdemeanor or petty offense if committed by an individual shall subject the business entity to the payment of a fine within the minimum and maximum fines authorized by sections 18-1.3-501 and 18-1.3-503 for the particular offense of which the business entity is convicted. FOR AN OFFENSE COMMITTED ON OR AFTER FEBRUARY 1, 2009, AN EXECUTIVE OFFICIAL SHALL BE SUBJECT TO THE PAYMENT OF A FINE WITHIN THE PRESUMPTIVE RANGES AUTHORIZED BY SECTION 18-1.3-401 (1) (a) (III). AN OFFENSE COMMITTED BY AN EXECUTIVE OFFICIAL THAT WOULD BE A MISDEMEANOR OR PETTY OFFENSE SHALL SUBJECT THE EXECUTIVE OFFICIAL TO THE PAYMENT OF A FINE WITHIN THE MINIMUM AND MAXIMUM FINES AUTHORIZED BY SECTIONS 18-1.3-501 AND 18-1.3-503 FOR THE PARTICULAR OFFENSE OF WHICH THE EXECUTIVE OFFICIAL IS CONVICTED.

(4) IT SHALL BE A COMPLETE AFFIRMATIVE DEFENSE FOR ANY EXECUTIVE OFFICIAL CHARGED UNDER SUBSECTION (1.5) OF THIS SECTION THAT, PRIOR TO BEING CHARGED, HE OR SHE REPORTED TO THE OFFICE OF THE ATTORNEY GENERAL ALL FACTS OF WHICH HE OR SHE WAS AWARE CONCERNING THE BUSINESS ENTITY'S CONDUCT THAT MET THE CRITERIA SET FORTH IN SUBSECTION (1)(a) OF THIS SECTION.

(5) (a) ANY INDIVIDUAL RESIDING IN COLORADO MAY FILE A PRIVATE RIGHT OF ACTION AGAINST ANY BUSINESS ENTITY OR ITS EXECUTIVE OFFICIALS FOR THEIR CONDUCT THAT MEETS THE CRITERIA SET FORTH IN SUBSECTION (1) OR SUBSECTION (1.5) OF THIS SECTION.

(b) IN A CIVIL ACTION BROUGHT UNDER THIS SECTION, COMPENSATORY OR PUNITIVE DAMAGES MAY BE AWARDED TO ANY GOVERNMENTAL ENTITY THAT IMPOSED BY LAW THE SPECIFIC DUTY TO BE PERFORMED BY THE BUSINESS ENTITY.

(c) THE AFFIRMATIVE DEFENSE SET FORTH IN SUBSECTION (4) OF THIS SECTION SHALL APPLY TO CIVIL ACTIONS INITIATED UNDER THIS SUBSECTION (5).

(d) SUCH MONEYS, WHEN APPROPRIATED, SHALL BE EXEMPT FROM ALL REVENUE AND SPENDING LIMITATIONS PROVIDED BY LAW.

(e) IF AN AWARD IS MADE UNDER THIS SUBSECTION (5), THE INDIVIDUAL FILING THE LAWSUIT SHALL BE ENTITLED TO REASONABLE ATTORNEY FEES AND COSTS FOR DEFENDING THE INTERESTS OF THE STATE. NO SUCH AWARD SHALL BE MADE FOR CLAIMS THAT LACKED SUBSTANTIAL JUSTIFICATION OR WERE INTERPOSED FOR DELAY OR HARASSMENT.

**ISAACSON
ROSENBAUM P.C.**
Law . Client . Community®

RECEIVED
MAR 07 2008
ELECTIONS
SECRETARY OF STATE

2-308
CA

Mark G. Grueskin
mgrueskin@ir-law.com

Direct Dial
303.256.3941

March 7, 2008

via **HAND DELIVERY**
Ms. Cesi Gomez
Colorado Secretary of State
Elections Division
1700 Broadway, Suite 270
Denver, Colorado 80290

Re: Initiative 2007-08 #73

Dear Ms. Gomez:

Attached please find the required draft of Initiative 2007-08 #73, which our office is filing on behalf of the Proponents for this measure.

Thank you very much.

Sincerely,



Amy Knight
Legal Assistant to Mark G. Grueskin

aak
enclosure
1768878_1.doc

Joanne King
8306 Katherine Way
Denver, Colorado 80221
303-429-2191

Larry Ellingson
8517 Bluegrass Circle
Parker, Colorado 80134
720-530-5592

RECEIVED

MAR 26 2008

ELECTIONS
SECRETARY OF STATE

11:31 a.m.
Dtb

COLORADO TITLE SETTING BOARD

In re Proposed Initiative 2007-2008 # 73 (“**Criminal Conduct by Businesses-Liability**”¹)

MOTION FOR REHEARING

On behalf of Joseph B. Blake, a registered elector of the State of Colorado, the undersigned hereby files this Motion for Rehearing in connection with the Proposed Initiative 2007–2008 #73 (“Criminal Conduct by Businesses-Liability, hereinafter described as the “Initiative”) which the Title Board (“Board”) heard on March 19, 2008.

1. The Board lacks jurisdiction to set a title for this Initiative as it contains multiple, unrelated, subjects in violation of Colo. Const. art. V, § 1(5.5) and Colo. Rev. Stat. § 1-40-106.5.

An initiative violates the single subject requirement when it relates to more than one subject and has at least two distinct and separate purposes which are not dependent upon or connected with each other. At first glance, the concept of a single subject requirement appears straightforward; however, an initiative with multiple subjects may be improperly offered as a single subject by stating the subject in broad terms. *See In the Matter of the Title, Ballot Title and Submission Clause, for 2007-2008 #17*, 172 P.3d 871, 873–74 (Colo. 2007); *see also, In re Title, Ballot Title & Submission Clause & Summary for 1999-2000 #258(A)*, 4 P.3d 1094, 1097 (Colo. 2000).

¹ Unofficially captioned “**Criminal Conduct by Businesses-Liability**” by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

“Grouping the provisions of a proposed initiative under a broad concept that potentially misleads voters will not satisfy the single subject requirement.” *In re Proposed Initiative, 1996-4, 916 P.2d 528* (Colo. 1996) (citing *In re Title, Ballot Title and Submission Clause, and Summary With Regard to a Proposed Petition for an Amendment to the Constitution to the State of Colorado Adding Subsection (10) to Section 20 of Article X, 900 P.2d 121, 125* (Colo. 1995)).

“The prohibition against multiple subjects serves to defeat voter surprise by prohibiting proponents from hiding effects in the body of an initiative. *In the Matter of the Title and Ballot Title and Submission Clause for 2005–2006 #55, 138 P.3d 273, 282* (Colo. 2006) [hereinafter, *In re Initiative #55*]. “An initiative that joins multiple subjects poses the danger of voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision coiled up in the folds of a complex initiative.” *In re Title, Ballot Title and Submission Clause 2007–2008, #17, 172 P.3d 871, 875* (Colo. 2007). In light of the foregoing, the Supreme Court has stated, “We must examine sufficiently an initiative’s central theme to determine whether it contains hidden purposes under a broad theme.” *Id.*

Initiative 73 groups multiple provisions under a broad concept of liability, which relate to more than one subject and have at least two distinct and separate purposes that are not dependent upon or connected to each other. *See In re Initiative #55, supra, 138 P.3d at 277.*

First, the Initiative dramatically expands the criminal liability of a business entity to all of its executive officials who knowingly cause a business entity to fail to discharge a specific duty of affirmative performance imposed by law.

The Initiative next creates a plethora of new crimes where no crime previously existed. The ambiguous language of the Initiative is not limited to conduct imposed by any governmental

entity. The Initiative would ostensibly criminalize traditionally civil concepts such as the breach of the duties: of fidelity, of good-faith, of loyalty, of prudence, to give warning of a dangerous condition, to act, of supervision, and the fiduciary duty, and the exercise of business judgment rule.

Second, the Initiative allows *any* Colorado resident to bring an action against any business entity or its executive officials for conduct that violates subsections (1) and (1.5) of the Initiative. As noted below, the Initiative fails to define “resident” and would thus permit any undocumented illegal alien residing in the State of Colorado to initiate a lawsuit against any business entity or executive official. The Initiative eliminates the need for the plaintiff to have suffered any harm or injury from the defendant’s alleged actions or failures to act. This is an extraordinary departure from the longstanding doctrine of standing.

Generally, to establish standing to sue, the plaintiff must show (1) an injury in fact (2) to a legally protected interest. *See Wimberly v. Ettenberg*, 194 Colo. 163, 570 P.2d 535 (1977). The Initiative is distinguishable from traditional private rights of action in allowing a person to bring an action without requiring any injury to arise from the allegedly wrongful conduct of the business, its employees, or agents. *Cf. Coors v. Security Life of Denver Co.*, 91 P.3d 393, 398 (Colo. App. 2003) (citing Colo. Rev. Stat. § 6-1-101 *et. seq.*).² By way of example only, under the Initiative, any resident—citizen, non-citizen, attorney seeking fees for bringing suit, or a business person seeking to cripple a competing business with the expense of a lawsuit or merely

² An extension of the single subject/clear title limitation applicable to bills, the Colorado Constitution prohibits voter initiatives from containing multiple subjects. Here, the civil private right of action clearly fails to fall under the title of Colo. Rev. Stat. § 18-1-606 Criminal Liability for Business Entities.

harassing a former employer or business that he or she had a bad experience with, may file a civil complaint.

Compensatory or punitive damages may be awarded to any “governmental entity” that imposed by law the specific duty to be performed by the business entity. The Initiative does not define governmental entity. Governmental entity could include, any agency or department of federal state or local government, including, but not limited to any board, commission, bureau, committee, council, authority, institution of higher education, political subdivision, or other unit of the executive, legislative, or judicial branches of the state; any city, county, city and county, town, or other unit of the executive, legislative or judicial branches thereof; any special district, school district, local improvement district, or special taxing district at the state or local levels of government; any enterprise as defined in Section 20 of Article X of the Colorado Constitution; or any other kind of municipal, public, or quasi-public corporation.

Where legitimate claims exist, the persons residing in Colorado and on behalf of governmental entities, including the federal government, will be competing for compensatory and punitive damages with parties who have claimed to have been injured or harmed by the conduct in question; such as employees, retirees and shareholders for damages. A race to the courthouse and trial may ensue which could ultimately result in an injured party to be precluded from collecting damages from a business entity or executive official. Similarly, in consolidated cases, courts would need to apportion damages between the governmental entity and the defendant. The resident-plaintiff who has brought a claim under the Initiative will not benefit from his private right of action; the governmental entity will. Conversely, the injured plaintiff may not benefit at all. Certainly, they would be unlikely to have the same rights as the resident-

plaintiff. For example, they would be unlikely to recover their attorney fees and costs. His compensation is limited to possible award of his attorneys' fees and costs.

Under the American Rule, the Court only awards fees to the prevailing party pursuant to statute, contract, or because the matter was groundless or frivolous. *See Krystkowiak v. W.O. Brisben Cos., Inc.*, 90 P.3d 859 (Colo. 2004), C.R.S. § 13-17-101, *et seq.* The Initiative, in contrast, provides fees for the successful party only where the successful party is the plaintiff. If the business entity-defendant were to prevail, it would not receive its attorneys' fees or costs. The plaintiff faces no risk beyond the cost of his own attorney in filing a complaint against a business entity or one of its employees. Even in the event that the claims are found to be frivolous, the defendant would not receive fees. This contravenes C.R.C.P. 11 and Colo. Rev. Stat. § 13-17-101, *et seq.*

Further, the Initiative is silent as to whether damages could be awarded if the conduct at issue does not arise as the result of a violation of a specific governmental law and to whom they could be awarded to (*e.g.*, State of Colorado). The Initiative fails to identify what type of damages may be awarded where the specific duty does not arise from a law imposed by a governmental entity, but rather from a common-law duty. The Initiative fails to identify how damages will be apportioned between different governmental entities when similar or different laws are the basis of a particular lawsuit.

In addition, if the plaintiff prevails in his claim against a business entity or executive official and it violated a duty imposed by one of the governmental entities above, the funds would be distributed to that entity and exempt from all revenues and spending limits set forth in

Colo. Rev. Stat. § 24-75-201.1 and the limits of TABOR. This creates a new revenue source for these governmental entities.

Finally, even though a party may not know of the specific duty to be performed, or that the business entity failed to perform such a duty, the proposed Initiative requires that a party report all facts concerning the business entity's conduct of which he or she is aware to the Colorado Attorney General. This report must be made prior to the party's being charged to qualify for the affirmative defense to a criminal charge under the proposed statute.

The Colorado Supreme Court rejected Initiative 55 under the single subject rule stating, "We identify at least two unrelated purposes grouped under the broad theme of restricting non-emergency government services: decreasing taxpayer expenditures that benefit the welfare of members of the targeted group and denying access to other administrative services that are unrelated to the delivery of individual welfare benefits." *See In the Matter of the Title and Ballot Title and Submission Clause for 2005–2006 #55, supra*, 138 P.3d at 280; *see also, In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104*, 987 P.2d 249 (Colo. 1999) (proposal that has at least two distinct and separate purposes which are not dependent upon or connected with each other violates the State Constitution's single-subject requirement). There, the complexity and omnibus provisions were hidden from the voter. In failing to describe non-emergency services by defining, categorizing, or identifying subjects or purposes, the Initiative failed to inform voters of the services the passage would affect.

The Supreme Court rejected a proposed ballot initiative which sought to amend the Taxpayer Bill of Rights under the Colorado Constitution because it violated the constitution's single-subject requirement where the proposed initiative created a tax cut, imposed new criteria

for voter approval of revenue and spending increases, and imposed likely reductions in state spending on state programs. See *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 37*, 977 P.2d 845 (Colo. 1999) (citing Colo. Const. art. V, § 1(5.5); art. X, § 20).

In *In re "Public Rights in Waters II,"* 898 P.2d 1076 (Colo. 1995), the Court held that grouping the distinct purposes of water conservation district elections and the "Public Trust Doctrine" under the theme of water did not satisfy the single-subject requirement because such a connection was too broad and too general to make them part of the same subject.

The Colorado Supreme Court has found numerous other situations where the single subject rule was violated. See e.g., *In re the Title, Ballot Title, and Submission Clause for 2007-2008 #17*, 172 P.3d 871 (Colo. 2007) (initiative sought to create an environmental conservation mission; however, a plain reading of the language also revealed the inclusion of a public trust standard for agency decision-making); *In re Title, Ballot Title and Submission Clause 1999-2000 #258(A)*, 4 P.3d 1094 (Colo. 2000) (elimination of school board's power to require bilingual education was not a separate subject so as to violate single-subject requirement); *In re Proposed Initiative for 1997-1998 # 30*, 959 P.2d 822, 823 (Colo. 1998) (court disapproved of an initiative burying unrelated revenue and spending increases within tax cut language).

2. The title of the Initiative is unclear, inaccurate, confusing, and misleading.

The Board's chosen language for the titles and summary must be fair, clear, and accurate, and the language must not mislead the voters. *In re Ballot Title 1999-2000 #258(A)*, 4 P.3d 1094, 1098 (Colo. 2000). "In fixing titles and summary, the Board's duty is 'to capture, in short form, the proposal in plain, understandable, accurate language enabling informed voter choice.'"

Id. (quoting *In re Proposed Initiative for 1999-2000 No. 29*, 972 P.2d 257, 266 (Colo. 1999)). *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104*, 987 P.2d 249 (Colo. 1999) (initiative's "not to exceed" language, repeated without explanation or analysis in summary, created unconstitutional confusion and ambiguity). This requirement helps to ensure that voters are not surprised after an election to find that an initiative included a surreptitious, but significant provision that was obfuscated by other elements of the proposal. *In the Matter of the Title, Ballot Title and Submission Clause for Proposed Initiative 2001-02 #43*, 46 P.3d 438, 442 (Colo. 2002). Eliminating a key feature of the initiative from the titles is a fatal defect if that omission may cause confusion and mislead voters about what the initiative actually proposes. *Id.*; see also, *In re Ballot Title 1997-1998 #62*, 961 P.2d at 1082. See *In re Proposed Initiative 1999-2000 #37*, 977 P.2d 845, 846 (Colo. 1999) (holding that titles and summary may not be presented to voters because more than one subject and confusing).

Here, the ballot title and submission clause fail to meet this standard. The first sentence of the ballot title provides, "concerning liability for criminal conduct by business entities". The subject of this is not the current law, but rather the extension of criminal conduct to executive officials. Further, the initial sentence does not capture the fact that not only is this an expansion of liability, but it is also creating new substantive criminal laws. Nor does the measure indicate that certain crimes are already covered by Colorado law and government regulations and municipal ordinances.

The Initiative provides that it allows a Colorado resident to bring an action for civil damages against an entity or executive official for such criminal conduct. First, it fails to indicate that resident is not defined and would include an undocumented illegal alien. Second, it

does not define "civil damages". Noticeably absent is a discussion of the fact that it would allow any governmental entity to recover compensatory and punitive damages. It does not indicate what type of damages would arise or where the moneys would be paid if the claim does not arise out of a duty created by a governmental entity. Third, the ballot title does not define governmental entity. The measure is unfair as it does not indicate that the governmental entity may be competing against injured parties for damages and that this may preclude truly injured parties such as retirees, shareholders or former employees.

The Initiative does not define who must pay attorney fees and costs to the successful plaintiff.

The measure misleads the voter into believing that a party can disclose all facts known to him or her to the attorney general at any time in order to utilize this as an affirmative defense. In fact, the disclosure must occur prior to being charged. The title is silent as to this provision and would mislead voters into believing that they could disclose information at any time and not be subject to liability.

The title fails to inform the voters that all awards of damages are paid to the governmental entity and then exempted from revenue and spending limits.

The title fails to define who falls within the purview of "executive official". Indeed, an executive official does not include an agent or high managerial agent as defined by the current statute. An executive is typically understood to include a supervisor; however, under this measure it would not include a person of that level of authority. This is also confusing and misleading to the voter or signer of the petition.

In 258(A) the titles were materially defective for failure to include a key feature of the initiative which resulted in misleading and confusing the voters. The title board failed to articulate in the titles that school districts and schools cannot be required to offer bilingual programs. Voters could assume that parents of non-English speaking students will have a meaningful choice between an English immersion program and a bilingual program, and thus, favor the proposal as assuring both programs. "It is well established that the use of catch phrase or slogans in the title, ballot title and submission clause, and summary should be carefully avoided by the Board. *In re Ballot Title 1999-2000 #258(A)*, *supra*, 4 P.3d at 1100; *In re Amend Tabor No. 32*, 908 P.2d 125, 130 (Colo. 1995). This rule recognizes that the particular words chosen by the Title Board should not prejudice electors to vote for or against the proposed initiative merely by virtue of those words' appeal to emotion. *Id*; *see also*, *In Re Ballot Title 1999-2000 # 215*, 3 P.3d 11, 14 (Colo. 2000) (allowing the term "open mining" as sufficiently clear because defined by statute).

Please set a rehearing in this matter for the next Title Board Meeting.

Respectfully submitted this 26th day of March, 2008.

FAIRFIELD AND WOODS, P.C.

By: *Susan F. Fisher*
Douglas J. Friednash, #18128
John M. Tanner, # 16233
Susan F. Fisher, #33174

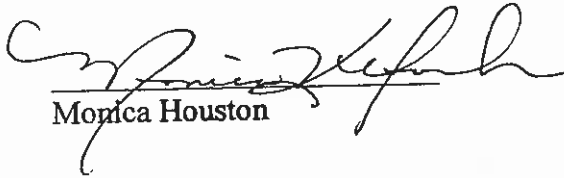
Petitioner's Address:

1445 Market Street.
Denver, CO 80202

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of March 2008, a true and correct copy of the foregoing **MOTION FOR REHEARING** was Hand Delivered and sent U.S. Mail as follows to:

Mark G. Grueskin
Isaacson Rosenbaum P.C.
633 Seventeenth St., Suite 2200
Denver, CO 80202


Monica Houston

Ballot Title Setting Board

Proposed Initiative 2007-2008 #73¹

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

An amendment to the Colorado Revised Statutes concerning liability for criminal conduct by business entities, and, in connection therewith, extending the criminal liability of a business entity to its executive officials for the entity's failure to perform a specific duty imposed by law; conditioning an executive official's liability upon his or her knowledge of the duty imposed by law and of the business entity's failure to perform such duty; allowing a Colorado resident to bring a civil action against a business entity or executive official for such criminal conduct; allowing an award of compensatory or punitive damages in the civil action to the governmental entity that imposed the specific duty on the business entity; permitting an individual who brings a successful civil action to be awarded attorney fees and costs; and allowing an executive official who discloses to the attorney general all facts known to the official concerning a business's criminal conduct to use that disclosure as an affirmative defense to criminal or civil charges.

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

Shall there be an amendment to the Colorado Revised Statutes concerning liability for criminal conduct by business entities, and, in connection therewith, extending the criminal liability of a business entity to its executive officials for the entity's failure to perform a specific duty imposed by law; conditioning an executive official's liability upon his or her knowledge of the duty imposed by law and of the business entity's failure to perform such duty; allowing a Colorado resident to bring a civil action against a business entity or executive official for such criminal conduct; allowing an award of compensatory or punitive damages in the civil action to the governmental entity that imposed the specific duty on the business entity; permitting an individual who brings a successful civil action to be awarded attorney fees and costs; and allowing an executive official who discloses to the attorney general all facts known to the official concerning a business's criminal conduct to use that disclosure as an affirmative defense to criminal or civil charges?

Hearing March 19, 2008:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 2:13 p.m.

Hearing April 2, 2008:

Motion for Rehearing granted in part to the extent Board amended titles; denied in all

¹ Unofficially captioned "Criminal Conduct by Businesses - Liability" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

other respects.
Hearing adjourned 2:28 p.m.