

CERTIFIED WORD COUNT: 652

SUPREME COURT, STATE OF
COLORADO

Two East 14th Avenue
Denver, CO 80203

Original Proceedings Pursuant To § 1-40-
107(2) C.R.S. (2006)

Appeal from the Ballot Title Board

Petitioner: JESSICA PECK CORRY, Opponent,

v.

Respondents: MARY PHILLIPS, CLARA
NEVAREZ, ANDREW PAREDES, Proponents.

and

Title Board: WILLIAM A. HOBBS, DANIEL L.
CARTON, and DANIEL DOMENCIO.

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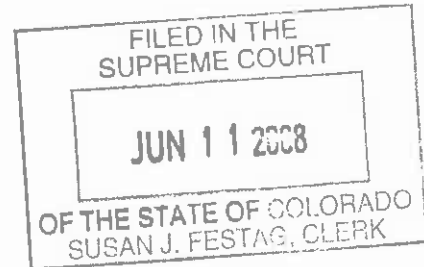
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Case Number: 08SA163

ANSWER BRIEF OF PETITIONER

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INTRODUCTION

Initiative #82 is a proposed amendment to the Colorado Constitution that is designed to constitutionalize and clarify existing laws prohibiting certain forms of discrimination and preferential treatment while preserving the authority of the State to implement programs designed to remedy past discrimination. The title, ballot title, and submission clause (“Title”) set for Initiative #82 fails to distinguish the Initiative from Amendment 46 as required by C.R.S. § 1-40-106(3)(b) and will likely lead to voter confusion. It is thus deficient and must be remanded to the Board.

ARGUMENT

The Board must do more than write titles for competing initiatives that are not identical; it must write titles that do not “conflict.” C.R.S. § 1-40-106(3)(b). Amendment 46 and Initiative #82 are very different proposed amendments. A title that fails to capture these differences in a manner that allows the voters to easily compare the proposed amendments is a conflicting title. In re Proposed Initiative #61, ___ P.3d ___, 2008 WL 2081574, at *5 (Colo. May 16, 2008) (holding that “[a] conflict between ballot titles exists when the title fails to accurately reflect the distinctions between the measures, and voters comparing the titles would not be able to distinguish between the two proposed measures”) (internal quotation

omitted). The burden on the Board to write titles that allow the voter to “distinguish between the two proposed measures” is greater than simply a requirement to not craft titles that might lead voters to mistakenly believe that the same initiative was on the ballot twice. Rather, the titles set by the Board should clearly reflect the distinctions between the competing measures in a manner designed to assist the voters in easily identifying the key differences between the measures. For the reasons set forth in Petitioner’s *Opening Brief*, the title set by the Board in this case does not do so.

Respondents and the Board argue that the title set by the Board for Initiative #82 sufficiently distinguishes Initiative #82 and Amendment 46 because the title for Initiative #82 contains an explicit definition of the term preferential treatment and the title for Amendment 46 does not. (*Brief of Respondent* p. 7; *Brief of Title Board* p. 9) Respondents are correct that, were a voter to carefully read both titles, the voter would know that they were the titles for two different initiatives. The voter would not, however, be likely to clearly appreciate the significance of these differences.

The Board argues that it lacks the power to compare Initiative #82 and Amendment 46 for the purpose of setting a title because such a comparison would involve an interpretation of Initiative #82. In setting a title the Board should not

“go beyond ascertaining the intent of the initiative’s drafters so as to interpret the meaning of the language proposed . . .”. Matter of Title, Ballot Title, Submission Clause, and Summary, Adopted April 4th, 1990, Pertaining to the Proposed Initiative on Surface Mining, 797 P.2d 1275, 1279 (Colo. 1990) (internal quotation omitted). It need not do so here. The proponents of Initiative #82 clearly articulated for the Board what they saw as the differences between Initiative #82 and Amendment 46. The title set by the Board can and should reflect these differences.

CONCLUSION

The “ultimate duty” of the Board and the Court when setting and reviewing a title is to set a title “by which neither the signers of initiative petitions nor the electors voting on an initiated measure will be misled.” Matter of Proposed Constitutional Amendment under the Designation “Pregnancy”, 757 P.2d 132, 134 (Colo. 1988) (internal quotation omitted). The title set for Initiative #82 must allow voters to easily understand Initiative #82 and compare and contrast it to Amendment 46. As written, the title does not do so. The title for Amendment #82 must thus be remanded to the Title Board.

Respectfully submitted June 11, 2008

HALE FRIESEN, LLP

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Richard A. Westfall, No. 15295

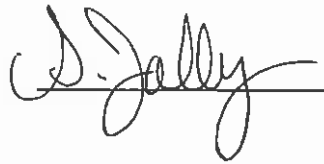
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CERTIFICATE OF SERVICE

I certify that on this 11th day of June, 2008, the foregoing **RESPONSE BRIEF OF PETITIONER** was served on all parties via overnight delivery service, postage pre-paid, addressed to the following:

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A handwritten signature in cursive script, appearing to read "D. Jolly", written over a horizontal line.