

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, #92

Petitioner:

JOSEPH B. BLAKE,
Objector,

v.

Respondents:

ERNEST DURAN, JR. and BRADLEY JOHNSON
Proponents,

and

Title Board:

WILLIAM A. HOBBS, DANIEL L. CARTIN, and
GEOFFREY BLUE.

Attorneys for Petitioner:

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FILED IN THE
SUPREME COURT

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OF THE STATE OF COLORADO
SUSAN J. FESTA, CLERK

▲ COURT USE ONLY ▲

Case No. 08SA178

PETITIONER'S OPENING BRIEF

TABLE OF CONTENTS

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW	1
STATEMENT OF THE CASE AND FACTS	1
A. Nature of the Case Course of Proceedings, and Disposition before Title Board	1
B. Statement of Facts	2
SUMMARY OF ARGUMENT.....	3
ARGUMENT	4
I. BY GOING WELL BEYOND MANDATING EMPLOYERS TO PROVIDE HEALTH INSURANCE, THE AUTHORITY’S BUREAUCRACY, FRAMEWORK AND ABILITY TO USE GOVERNMENT FUNDS TO PAY FOR THE PROGRAM, VIOLATES THE SINGLE PURPOSE DOCTRINE	4
A. Legal Standard.....	4
B. By Going Well Beyond Mandating Employers to Provide Health Insurance, the Authority’s Bureaucracy, Framework and Ability to Use Government Funds to Pay for the Program, Violates the Single Purpose Doctrine	7
II. THE INITIATIVE IS CONFUSING, UNFAIR MISLEADING	12
CONCLUSION	14
ATTACHMENTS:	
1. Text for Proposed Initiative for 2007-2008 #92	
2. Final Title for Proposed Initiative for 2007-2008 #92	

TABLE OF AUTHORITIES

CASES

<i>In re Proposed Initiative, 1996-4, 916 P.2d 528 (Colo. 1996)</i>	6
<i>In re the Matter of the Title, Ballot Title and Submission Clause for 2007-2008 #17, 172 P.3d 871 (Colo. 2007)</i>	4, 5, 7
<i>In re the Matter of Title, Ballot Title and Submission Clause for 2007-2008 #57 (Colo. May 23, 2008)</i>	12, 13
<i>In re the Matter of the Title, Ballot Title and Submission Clause for 2007-2008 #62, (Colo. May 16, 2008)</i>	4, 13
<i>In re Title, Ballot Title & Submission Clause and Summary for 1997-1998 #30, 959 P.2d 822 (Colo. 1998)</i>	5
<i>In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 #37, 977 P.2d 845 (Colo. 1999)</i>	12
<i>In re Title, Ballot Title & Submission Clause and Summary for 1999-2000 #258(A), 4 P.3d 1097 (Colo. 2000)</i>	4, 5, 6
<i>In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-2002 #43, 46 P.3d 438 (Colo. 2002)</i>	7
<i>In re Title, Ballot Title & Submission Clause and Summary for 2005-2006 #55, 138 P.3d 273 (Colo. 2006)</i>	6
<i>In re Title, Ballot Title & Submission Clause and Summary for 2005-2006 #75, 138 P.3d 267 (Colo. 2006)</i>	5

*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 Subjection (1) to Section 20 of Article X,
900 P.2d 121 (Colo. 1995) 6*

Water Rights II, 898 P.2d 1086 (Colo. 1995)..... 10, 11

STATUTES

Colo. Rev. Stat. § 1-40-106 1

Colo. Rev. Stat. § 1-40-106.5 1, 3

Colo. Rev. Stat. § 1-40-106(3)(b)..... 12

Colo. Rev. Stat. § 1-40-107(2) 1

CONSTITUTIONAL PROVISIONS

Colo. Const. art V, § 1(5.5) 1, 12

Colo. Const. art. X, § 20 12

Joseph B. Blake, a registered elector of the State of Colorado, the undersigned, hereby files this Opening Brief to appeal the Title Board's approval of the title for Proposed Initiative 2007-2008 #92 (unofficially captioned by legislative staff for tracking purpose, "Employer Responsibility for Health Insurance")(hereinafter "Initiative").

STATEMENT ISSUES PRESENTED FOR REVIEW

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

STATEMENT OF THE CASE AND FACTS

A. Nature of the Case Course of Proceedings, and Disposition before the Title Board.

The Title Board conducted its initial public meeting and set title for Proposed Initiative 2007-2008 #92 on May 7, 2008. Petitioner filed a Motion for Rehearing pursuant to section 1-40-107(2), on May 14, 2008. The Motion for Rehearing was heard at the next meeting of the Title Board on May 21, 2008. There, by a vote of two to one, 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 the Initiative.

B. Statement of the Facts

Section 16(1) requires every employer in the State of Colorado that employs twenty or more employees to, directly or indirectly, provide major medical health care coverage for its employees and their dependents. Initiative, Section 16(2).

Section 16(2) requires the State of Colorado to establish a health insurance authority (the "Authority"). The Authority is required to administer the provisions of the Initiative. Initiative, Section 16(2).

Employers that do not directly provide health care coverage for employees and their dependents must pay premiums to the Authority, which shall not provide coverage itself but shall have the power to contract with health insurance carriers, companies, and organizations to provide health care coverage. Initiative, Section 16(2). An employer shall pay premiums to the Authority in such amounts as are determined by the Authority to fulfill the requirements of this section. Initiative, Section 16(4).

The Authority is to be funded by the premiums paid to it by employers who do not provide health care coverage directly. Initiative, Section 16(3). While the

Initiative is predicated upon the employers' responsibility to provide major medical health insurance coverage for its employees, the Initiative provides that the General Assembly shall not be precluded from using sources of revenue other than the General Fund to pay for the costs of administering the Authority or providing the health care coverage mandated by this section. Initiative, Section 16(3).

To comply with this section, the health care coverage offered or provided by the employer shall not require the employee to pay more than twenty percent of the premium cost of such coverage for the employee and more than thirty percent of the premium cost of coverage for their dependents. Initiative, Section 16(4).

The Initiative mandates in Section 16(6) that the General Assembly enact such laws to implement the requirement for health insurance coverage provided in this section. This includes defining terms that are not defined in this section, such as the required components of health care coverage and for the administration of the Authority. The effective date of the Initiative is delayed until the General Assembly fills in the void.

SUMMARY OF ARGUMENT

The actions of the Title Board should be reversed because the Title violates the single subject rule set forth in C.R.S. § 1-40-106.5.

The Title is unclear, confusing, misleading, and unclear.

ARGUMENT

I. **BY GOING WELL BEYOND MANDATING EMPLOYERS TO PROVIDE HEALTH INSURANCE, THE AUTHORITY'S BUREAUCRACY, FRAMEWORK AND ABILITY TO USE GOVERNMENT FUNDS TO PAY FOR THE PROGRAM, VIOLATES THE SINGLE PURPOSE DOCTRINE**

A. **Legal Standard**

The Colorado Constitution provides that the Title Board may not set the title of a proposed initiative, or submit it to the voters, if the initiative contains multiple purposes *In re the Matter of the Title, Ballot Title and Submission Clause for 2007-2008 #62* (Colo. May 16, 2008). A proposal that has at least two distinct and separate purposes which are not dependent upon or connected with each other violates the single-subject requirement. *Id.*

An initiative with multiple subjects may not be 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) (holding measure violated single subject requirement in creating department of environmental conservation and mandating a public trust standard); *see also, In re Title, Ballot Title & Submission Clause & Summary for 1999-2000 #258(A)*, *supra*, 4 P.3d at 1097 (holding

that elimination of school board's powers to require bilingual education not separate subject; titles and summary materially defective in failing to summarize provision that no school district or school could be required to offer bilingual education program; and Titles contained improper catch phrase).

When analyzing whether an initiative meets the single subject requirement, this Court must characterize the proposal only insofar as necessary to conduct review for compliance with the constitutional or statutory provisions that apply to the initiative process. *In re Title, Ballot Title & Submission Clause, & Summary for 1997-1998 # 30*, 959 P.2d 822, 825 (Colo. 1998). In order to do so, this Court applies the general rules of statutory construction and gives the words of the initiative their plain and ordinary meaning. *In re Title, Ballot Title & Submission Clause & Summary for 2005-2006 #75*, 138 P.3d 267, 271 (Colo. 2006).

An initiative with multiple subjects may not be properly 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) (holding measure violated single subject requirement in creating department of environmental conservation and mandating a public trust standard); *see also, In re Title, Ballot Title & Submission Clause & Summary for 1999-2000 #258(A)*, *supra*, 4

P.3d at 1097 (holding that elimination of school board’s powers to require bilingual education not separate subject; titles and summary materially defective in failing to summarize provision that no school district or school could be required to offer bilingual education program; and titles contained improper catch phrase).

“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, 124–25 (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) (holding that there were “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”).

“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, supra*, 172 P.3d at 875. In light of the foregoing, this Court has stated, “We must examine sufficiently an initiative’s central theme to determine whether it contains hidden purposes under a broad theme.” *Id.*

This Court may engage in an inquiry into the meaning of terms within a proposed measure if necessary to review an allegation that the measure violates the single subject rule. *Id.* (“While we do not determine an initiative’s efficacy, construction, or future application, we must examine the proposal sufficiently to enable review of the Title Board’s action.”); *In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-2002 #43*, 46 P.3d 438, 443 (Colo. 2002) (“[W]e must sufficiently examine an initiative to determine whether or not the constitutional prohibition against initiative proposals containing multiple subjects has been violated.”).

B. By Going Well Beyond Mandating Employers to Provide Health Insurance, the Authority’s Bureaucracy, Framework and Ability to Use Government Funds to Pay for the Program, Violates the Single Purpose Doctrine

The heading of the text of the constitutional amendment provides, “Employers to provide health care coverage.” *See* Final Text. The single subject of the Initiative as reflected by the Title Board, is “[a]n amendment to the Colorado Constitution concerning health care coverage for employees, and in connection therewith, requiring employers that regularly employ twenty or more employees to provide major health care coverage to their employees”. In accordance therewith, the Initiative requires every employer in the State of Colorado that employs twenty or more employees to provide, directly or indirectly, major medical health care coverage for its employees or dependents.

The inherent problem in the measure is that it does more than merely create this mandate on employers. The Initiative requires the State of Colorado to establish the Authority to provide an indirect means for employers to provide health insurance for its employees by paying premiums to the Authority in such amounts as determined by the Authority to fulfill the requirements of this section. While proponents may argue that this is simply an implementation feature of the Initiative, this is incorrect. The Authority is a super-agency designed to do much more than deliver the indirect health insurance coverage.

Specifically, Section 16(2) requires the Authority to administer the provisions of the Initiative. In other words, the Initiative is a centralized bureaucracy that will be required to monitor and research insurance options and look for the most inexpensive and comprehensive insurance plans for employees and their dependents. The Authority will then have the power to enter into contracts with health insurance companies, carriers and organizations to provide coverage for businesses.

In order to administer the provisions of the Initiative, among other things, the Authority will also be required to handle the operations of the plans, process claims, review plans, create and follow applicable regulations, communicate with employers, employees, and their dependents, and follow and create applicable reporting requirements. The full scope of the infrastructure will not be fully determined until the General Assembly meets and implements these provisions in accordance with the Initiative. The Initiative mandates in Section 16(6) that the General Assembly enact such laws to implement the requirement for health insurance coverage provided in this section. This includes defining terms that are not defined in this section, such as the required components of health care coverage and for the administration of the Authority. The effective date of the Initiative is delayed until the General Assembly fills in the void.

While the Initiative is predicated upon the employers' responsibility to provide major medical health insurance coverage for its employees, the Initiative provides that the General Assembly shall not be precluded from using sources of revenue other than the General Fund to pay for the costs of administering the Authority or providing the health care coverage mandated by this section. In other words, the Initiative would allow the super-agency to borrow money or create new fees on state services to pay for this mandate on employers. Thus, as a separate and distinct purpose, the government subsidized program will need to use government funds to pay for administrative costs, employers and employee's share of costs.

This Initiative is similar to many other omnibus measures that violated the single subject requirement. In *Waters Rights II*, this Court rejected an initiative which sought to add a "strong public trust doctrine regarding Colorado waters, that water conservancy and water districts hold elections to change their boundaries or discontinue their existence, that the districts also hold elections for directors and that there be dedication of water right use to the public." *See id.* at 1077.

The Court held that the initiative violated the single subject provision because there was no connection between the two district election requirements paragraphs and the two public trust water rights paragraphs. The common characteristic that the

paragraphs all involved water was too general and too broad to constitute a single subject. The Court observed:

The public trust water rights paragraphs of the Initiative impose obligations on the state of Colorado to recognize and protect public ownership of water. The water conservancy or conservation districts have little or no power over the administration of the public water rights or the development of a statewide public trust doctrine because such rights must be administered and defended by the state and not by the local district.

Id. at 1080.

The same is true here. Requiring businesses to provide insurance to employees (and their families) is akin to the establishment of the Public Trust doctrine in *Water Rights II*—it is substantive law. The creation of a governmental super-agency in the Initiative is akin to the elections aspect of the initiative in *Water Rights II*—it is procedural. The Initiative therefore covers two separate subjects.

Similarly, *Initiative 55* sought to prohibit government from providing non-emergency services to persons who were otherwise not lawfully present in the United States. Initiative 55 did not define “non-emergency” and “services,” categorize the types of services to be restricted, or set forth the purpose or purposes of restricting non-emergency services. *See No. 55, supra*. This 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.” *No. 55, supra*, 138 P.3d at 280.

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 # 37*, 977 P.2d 845 (Colo. 1999) (citing Colo. Const. art. V, § 1(5.5); art. X, § 20).

Under this precedent, the Court should reverse the determination of the Title Board.

II. THE INITIATIVE IS CONFUSING, UNFAIR, MISLEADING.

Section 1-40-106(3)(b), C.R.S. 2007, provides that “[t]he title for the proposed law or constitutional amendment...shall correctly and fairly express the true intent and meaning thereof...” “Accordingly, the titles must be fair, clear and accurate.” *In the*

Matter of the Title, Ballot Title, and Submission Clause for 2007-2008 #57 (Colo. May 23, 2008). This requirement serves to make sure that voters are not surprised after an election to find that an initiative included a surreptitious but significant provision that was disguised by other elements of the proposal. *Id.* This Court will reverse the Title Board's decision if the titles are insufficient, unfair or misleading. *In re the Matter of Title, Ballot Title, and Submission Clause for 2007-2008 #62* (Colo. May 16, 2008).

The Initiative is unclear as to whether it requires the Authority to pay for an employee's portion of the health insurance coverage if the employee is unable to finance his or her portion or that of their dependents. However, the Initiative suggests that the authority or government would be responsible for such costs. This aspect is confusing and misleading.

The title fails to mention that the effective date of the Initiative is delayed until the General Assembly has an opportunity to enact appropriate legislation to implement the Initiative. This includes, by way of example only, providing for the administration of the authority and defining terms. Instead, it merely provides that the effective date will be no later than November 1, 2009.

The title fails to disclose that the Initiative creates a super-agency with the power, among other things, to administer the provisions of health care coverage.

Voters will be surprised to know that the Initiative will create a heavily regulated government subsidized program.

CONCLUSION

Petitioner requests the Court to reverse the actions of the Title Board and to direct it to strike the Title, ballot title, and submission clause and return proposed Initiative for 2007-2008 # 92 to its proponents.

Respectfully submitted this 3rd day of June, 2008.

FAIRFIELD AND WOODS, P.C.

By: 

Douglas J. Friednash, #18128

John M. Tanner, #16233

Susan F. Fisher, #33174

Petitioner's Address:

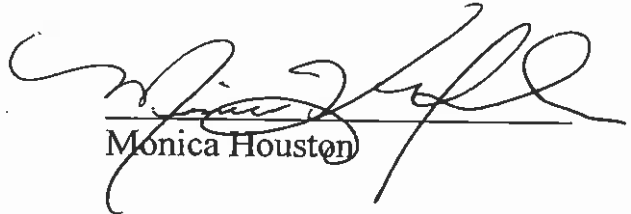
1445 Market Street
Denver, CO 80202

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June, 2008, a true and correct copy of the foregoing **PETITIONER'S OPENING BRIEF** was hand delivered to the following:

Michael J. Belo
370 17th Street, Suite 4800
Denver, CO 80202

Maurice G. Knaizer, Esq.
Deputy Attorney General
Colorado Department of Law
1525 Sherman Street, 5th Floor
Denver, CO 80203



Monica Houston

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APR 25 2008

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Proposed Initiative #92 Final Text

Be it Enacted by the People of the State of Colorado
GOVERNOR OF STATE

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

Section 16. Employers to provide health care coverage.

(1) EVERY EMPLOYER IN THE STATE OF COLORADO THAT EMPLOYS TWENTY OR MORE EMPLOYEES SHALL PROVIDE, DIRECTLY OR INDIRECTLY, MAJOR MEDICAL HEALTH CARE COVERAGE, REFERRED TO IN THIS SECTION AS "HEALTH CARE COVERAGE," FOR ITS EMPLOYEES AND THEIR DEPENDENTS.

(2) THE STATE OF COLORADO SHALL ESTABLISH A HEALTH INSURANCE AUTHORITY, REFERRED TO IN THIS SECTION AS THE "AUTHORITY," TO ADMINISTER THE PROVISION OF SUCH HEALTH CARE COVERAGE. EMPLOYERS THAT DO NOT DIRECTLY PROVIDE HEALTH CARE COVERAGE FOR EMPLOYEES AND THEIR DEPENDENTS SHALL PAY PREMIUMS TO THE AUTHORITY, WHICH SHALL NOT PROVIDE SUCH HEALTH CARE COVERAGE ITSELF BUT SHALL HAVE THE POWER TO CONTRACT WITH HEALTH INSURANCE CARRIERS, COMPANIES, AND ORGANIZATIONS TO PROVIDE HEALTH CARE COVERAGE.

(3) THE GENERAL ASSEMBLY SHALL NOT APPROPRIATE MONEYS FROM THE GENERAL FUND TO PAY COSTS OF ADMINISTERING THE AUTHORITY OR COSTS OF THE HEALTH CARE COVERAGE MANDATED BY THIS SECTION. THE AUTHORITY SHALL BE FUNDED BY THE PREMIUMS PAID TO IT BY EMPLOYERS WHO DO NOT PROVIDE HEALTH CARE COVERAGE DIRECTLY, AS DEFINED IN THIS SECTION. THE GENERAL ASSEMBLY SHALL NOT BE PRECLUDED FROM USING OTHER SOURCES OF REVENUE, IF NECESSARY, TO PAY FOR THE COSTS OF ADMINISTERING THE AUTHORITY OR PROVIDING THE HEALTH CARE COVERAGE MANDATED BY THIS SECTION.

(4) AN EMPLOYER SHALL BE DEEMED TO PROVIDE HEALTH CARE COVERAGE "DIRECTLY" BY OFFERING HEALTH CARE COVERAGE IN COMPLIANCE WITH THIS SECTION TO ITS EMPLOYEES THROUGH A HEALTH INSURANCE CARRIER, COMPANY, OR ORGANIZATION OR BY ACTING AS A SELF-INSURER. TO COMPLY WITH THIS SECTION, THE HEALTH CARE COVERAGE OFFERED OR PROVIDED BY THE EMPLOYER SHALL NOT REQUIRE THE EMPLOYEE TO PAY MORE THAN TWENTY PERCENT OF THE PREMIUM COST OF SUCH COVERAGE FOR THE EMPLOYEE AND SHALL NOT REQUIRE THE EMPLOYEE TO PAY MORE THAN THIRTY PERCENT OF THE PREMIUM COST OF COVERAGE FOR DEPENDENTS OF THE EMPLOYEE. IN THE ALTERNATIVE, AN EMPLOYER SHALL PROVIDE HEALTH CARE COVERAGE "INDIRECTLY" BY PAYING PREMIUMS TO THE AUTHORITY IN SUCH AMOUNTS AS ARE DETERMINED BY THE AUTHORITY TO FULFILL THE REQUIREMENTS OF THIS SECTION.

(5) AS USED IN THIS SECTION, "EMPLOYER" MEANS ANY INDIVIDUAL, PERSON, FIRM, PARTNERSHIP, ASSOCIATION, CORPORATION, LIMITED LIABILITY COMPANY, COMPANY, OR OTHER ENTITY THAT REGULARLY EMPLOYS TWENTY OR MORE EMPLOYEES IN THE STATE OF COLORADO, INCLUDING A RECEIVER OR OTHER PERSON ACTING ON BEHALF OF THE EMPLOYER. THE TERM DOES NOT INCLUDE THE STATE OR ANY POLITICAL SUBDIVISION THEREOF.

(6) THE GENERAL ASSEMBLY SHALL ENACT SUCH LAWS AS ARE NECESSARY TO IMPLEMENT THE REQUIREMENT FOR HEALTH CARE COVERAGE PROVIDED IN THIS SECTION; TO DEFINE TERMS THAT

ARE NOT DEFINED IN THIS SECTION, INCLUDING THE REQUIRED COMPONENTS OF HEALTH CARE COVERAGE; AND TO PROVIDE FOR THE ADMINISTRATION OF THE AUTHORITY.

(7) THE EFFECTIVE DATE OF THIS SECTION SHALL BE DELAYED UNTIL THE GENERAL ASSEMBLY HAS AN OPPORTUNITY TO ENACT APPROPRIATE LEGISLATION TO IMPLEMENT THE REQUIREMENTS OF THIS SECTION. THE EFFECTIVE DATE, IN ANY EVENT, SHALL NOT BE DELAYED BEYOND NOVEMBER 1, 2009.



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APR 25 2008

**ELECTIONS
SECRETARY OF STATE
VIA HAND DELIVERY**

April 25, 2008

Mike Coffman
Colorado Secretary of State
1700 Broadway, Suite 270
Denver, CO 80290

Re: **Proposed Initiative Measure 2007-2008 #92 concerning employer responsibility for health insurance**

Dear Mr. Coffman:

On behalf of the proponents, I am submitting the attached initiative for the Title Board hearing which I understand is scheduled to take place on Wednesday, May 7, 2008. I will plan to be available then. In accordance with requirements, I am submitting (1) the original typed draft submitted to the Legislative Council for a review and comment hearing, (2) an amended typed draft with changes highlighted, and (3) a final typed draft for printing of the proposed initiative.

The proponents of this initiative are Ernest L. Duran, Jr., and Irene Goodell. Their addresses and other information are as follows:

Ernest L. Duran, Jr., President
United Food & Commercial Workers, Local 7
7760 West 38th Avenue, Suite 400
Wheat Ridge, CO 80033
Telephone: (303) 425-0897
E-mail: eduran@ufcw7.com

Irene Goodell
2873 Calkins Place
Broomfield, CO 80020
Telephone: (303) 465-5392
E-mail: irinagood@msn.com

Please direct all correspondence related to this initiative to me. Thanks for your cooperation and consideration.

Sincerely,

BERENBAUM, WEINSHIENK & EASON, P.C.

Michael J. Belo

MJB:PBA
Enclosure: Proposed Initiative Measure 2007-2008 #92
cc: Ernest L. Duran, Jr.
Irene Goodell

Ballot Title Setting Board

Proposed Initiative 2007-2008 #92¹

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

An amendment to the Colorado Constitution concerning health care coverage for employees, and, in connection therewith, requiring employers that regularly employ twenty or more employees to provide major medical health care coverage to their employees; excluding the state and its political subdivisions from the definition of "employer"; allowing an employer to provide such health care coverage either directly through a carrier, company, or organization or acting as a self-insurer, or indirectly by paying premiums to a health insurance authority to be created pursuant to this measure that will contract with health insurance carriers, companies, and organizations to provide coverage to employees; providing that employees shall not be required to pay more than twenty percent of the premium for such coverage for themselves and more than thirty percent of such coverage for the employees' dependents; financing the costs of administering the health insurance authority and health care coverage provided through the authority with premiums paid by employers to the authority and, if necessary, such revenue sources other than the state general fund as determined by the general assembly; directing the general assembly to enact such laws as are necessary to implement the measure; and setting the effective date of the measure to be no later than November 1, 2009.

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 health care coverage for employees, and, in connection therewith, requiring employers that regularly employ twenty or more employees to provide major medical health care coverage to their employees; excluding the state and its political subdivisions from the definition of "employer"; allowing an employer to provide such health care coverage either directly through a carrier, company, or organization or acting as a self-insurer, or indirectly by paying premiums to a health insurance authority to be created pursuant to this measure that will contract with health insurance carriers, companies, and organizations to provide coverage to employees; providing that employees shall not be required to pay more than twenty percent of the premium for such coverage for themselves and more than thirty percent of such coverage for the employees' dependents; financing the costs of administering the health insurance authority and health care coverage provided through the authority with premiums paid by employers to the authority and, if necessary, such revenue sources other than the state general fund as determined by the general assembly; directing the general assembly to enact such laws as are necessary to implement the measure; and setting the effective date of the measure to be no later than November 1, 2009?

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

*Hearing May 7, 2008:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 3:21 p.m.*

*Hearing May 21, 2008:
Motion for Rehearing denied.
Hearing adjourned 2:03 p.m.*