

**SUPREME COURT OF COLORADO**

2 East 14<sup>th</sup> Avenue 4<sup>th</sup> 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,

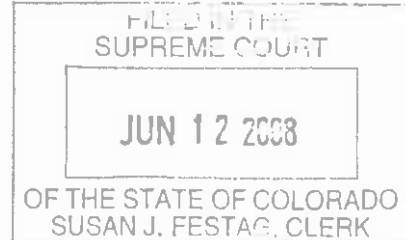
v.

**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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Case No. 08SA178

**PETITIONER'S ANSWER BRIEF TO RESPONDENTS' OPENING BRIEF**

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

### ARGUMENT

**The Health Insurance Authority's Bureaucracy, Framework, and Ability to Tap into Government Funds to Pay for the Health Care of Employees and Administration of the Program, Goes Far Beyond the Mandate on Employers to Provide Major Medical Health Insurance to Employees and Their Dependents.**

Respondents' package the self-proclaimed "Health Care Coverage Initiative" (Opening Brief, p. 6) under the following single subject: "Employers with twenty or more employees shall provide employees with health care coverage, either directly or indirectly." *Id.* A cursory review of the proposal, however, quickly reveals that the Authority's bureaucracy, framework, and ability to use government funds, to pay for health insurance and the program, goes far beyond the Initiative's mandate on employers to provide major medical health insurance to its employees and their dependents.

In fact, in its argument in support of the single subject requirement, the respondents assert that all of the provisions are related to the employer mandate, even

the funding mechanism. (“[The Initiative] provides for funding of the authority through the premiums paid by employers who do not provide health coverage directly to their employees.” (Opening Brief, pp. 9-10)).

Significantly, however, the Respondents fail to mention that the Initiative requires that the Authority determine public funding in the event that funding is not available through private employers.

Respondents’ characterization of the single subject—the employers’ responsibility to provide major medical health insurance coverage for its employees—is fatally flawed. 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 it creates 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 employees’ share of costs.

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 through payment of premiums to the Authority, amounts which shall be determined by the Authority. Further, the Authority is a super-agency designed to do much more than just 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, 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. In Section 16(6), the Initiative mandates 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 has filled in the void.

This Court has long recognized that 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)*, 4 P.3d 1098, 1097 (Colo. 2000) (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); *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”)

Respondents would prefer that this Court construe the single subject requirement liberally and not delve into the mechanics of the Initiative. This Court, however, must 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. *See 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.”)

Respondents attempt to distinguish this case from *Waters Rights II*, lacks merit. *In re Proposed Initiative “Public Rights in Waters II,”* 898 P.2d 1076 (Colo. 1995). There, 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.” *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:

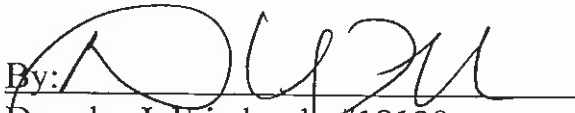
The public trust water rights paragraphs of the Initiative impose obligations on the state of Colorado to recognize and protect public ownership of water. The water conservancy or conservation districts have little or no power over the administration of the public water rights or the development of a 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.

Respectfully submitted this 12th day of June, 2008.

FAIRFIELD AND WOODS, P.C.


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### CERTIFICATE OF SERVICE

I hereby certify that on the 12<sup>th</sup> day of June, 2008, a true and correct copy of the foregoing **PETITIONER'S ANSWER BRIEF TO RESPONDENTS' OPENING BRIEF** was hand delivered to the following:

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