

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, #93

Petitioner:

JOSEPH B. BLAKE,
Objector,

v.

Respondents:

ERNEST DURAN, JR. and BRADLEY JOHNSON
Proponents,

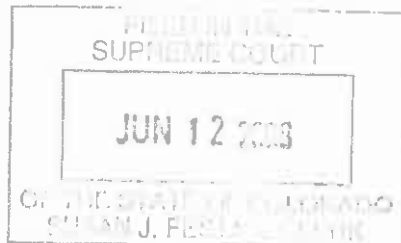
and

Title Board:

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

Attorneys for Petitioner:

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Case No. 08SA180

OBJECTOR'S ANSWER BRIEF TO PROPONENTS

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Joseph B. Blake, Objector, by and through his attorneys, Fairfield and Woods, P.C., hereby files his Answer Brief to the Opening Brief for Proponents as follows.

ARGUMENT

I. Making a Safe Workplace the Public Policy of Colorado and Eliminating the Exclusivity of Workers' Compensation Act are Two Separate Purposes.

The proof that the Initiative covers multiple subjects is found in the proponent's own Opening Brief, at page 6, where they state:

The purpose of Initiative 93 can be summed up in one sentence: Employers shall provide a safe and healthy workplace, and employees who are injured because of the failure to provide such a workplace shall be entitled to file suit in state district court, in addition to remedies they have under the Workers' Compensation Act.

Every initiative—no matter how confusing, complicated, or multi-layered and no matter how many subjects it covers—can always be stated in broadly in one sentence (although the sentence, like the one above, might be clumsy, wordy, awkward, and ungrammatical).

For example, the Initiative in *In the Matter of the Title, Ballot Title and Submission Clause, for 2007-2008 #17*, 172 P.3d 871, 873–74 (Colo. 2007) could be stated as a single sentence: “Should a department of environmental conservation be created, and should it apply the public trust standard?” Despite this, the Court

decided just last year that that initiative violated the single subject rule. Simply framing the issue under one overbroad theme does not make it a single subject.

Further, this case is very close to #17 because, like #17, it covers both substantive and procedural aspects of the same broad topic. In #17, the substantive subject was the public trust standard, and the procedural subject was the department of environmental conservation to carry out that standard.

Here, one subject of the Initiative is substantive—shall employers be required to provide a safe and healthy workplace for employees?—and a completely separate subject is procedural—should the exclusivity of the current worker’s compensation system be abolished?

“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”).

The Initiative here similarly has at least two purposes—one to make a “safe workplace” a constitutional right and a second to do away with the exclusivity of the Worker’s Compensation Act and allow injured workers to commence an action in district court for substantially more damages than the limited damages the Worker’s Compensation Act allows.

The stripping away of the exclusivity of the Workers’ Compensation system is a completely separate subject from whether a safe workplace should be the doctrine of Colorado. This is not a question of “ever more exacting levels of analytic abstraction”; this is the blunt purpose of the Initiative. No greater analysis is needed than the court used in #55 just last year, or that Justice Hobbs used just last month in *In re Title, Ballot Title, Submission Clause for 2007-2008 #62*, --- P.3d ----, 2008 WL 2081571 (Colo.).

The constitutional prohibition against an initiative proposing more than a single subject “prevents the proponents of an initiative from joining multiple subjects into a single initiative in the hope of attracting support from various factions which may have different or conflicting interests.” *In re Proposed Initiative “Public Rights in Waters II,”* 898 P. 2d 1076, 1079 (Colo. 1995). Here, a voter who favors the substantive safe workplace aspect of the Initiative but who disfavors

doing away with Workers' Compensation system being exclusive remedy is faced with a choice between that voter's two preferences.

Further, this is not a "mere implementation or enforcement detail directly tied to the Initiative's single subject." To the contrary, there are numerous ways the public policy of a safe workplace could be put into effect without doing away with the exclusivity of the Worker's Compensation system. The two are not reasonably related to each other sufficiently closely that they can be in the same initiative.¹

II. The Title is Misleading because it does not Clearly State that the Exclusivity of Workers' Compensation is being Changed.

Just last month in *Blake v. King*, --- P.3d ----, 2008 WL 2167847, at 3 (Colo. 2008) this court held:

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 re Proposed Initiative 1999-2000 # 256*, 12 P.3d 246, 256 (Colo. 2000). This requirement ensures 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. *In re Proposed Initiative 2001-2002 # 43*, 46 P.3d at 442.

¹ Although both the Proponents of the Initiative and the Title Board claim the Initiative has a "single subject," their descriptions of that subject in their respective opening briefs are different. *Compare* Proponents Opening Brief at p. 6 *with* Title Board Opening Brief at p. 4. This proves that it is by no means clear even among supporters what the supposed "single subject" of the Initiative is.

(Emphases added.)

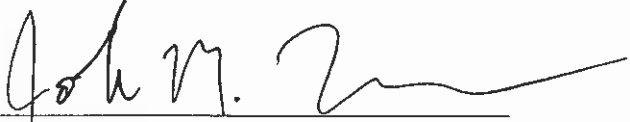
The true intent of the Initiative is to do away with the exclusivity of the Worker's Compensation Act. Any title that does not disclose this is neither fair, nor clear, nor accurate, much less all three as is required by C.R.S. § 1-40-106(3)(b).

Further, the first workers' compensation legislation in Colorado was passed in 1924—before the vast majority of voters were born. In 1953, it was amended to become the exclusive remedy for an injured worker. *Great Western Sugar Co. v. Erbes*, 148 Colo. 566, 367 P.2d 329 (Colo. 1961) (holding that the Workers' Compensation Act was the exclusive remedy for an injured worker).

Doing away with this exclusivity is a monumental change in Colorado public policy. This is not a question of this Court having to delve down to “every possible effect” of the Initiative. To the contrary, this is the sole purpose and primary effect of the Initiative. To leave it out of the title is to subject the voters to improper surprise.

Respectfully submitted this 12th day of June, 2008.

FAIRFIELD AND WOODS, P.C.

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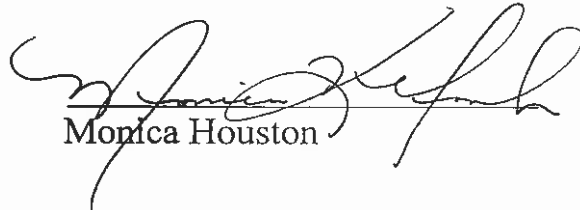
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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of June, 2008, a true and correct copy of the foregoing **OBJECTOR'S ANSWER BRIEF TO PROPONENTS** was hand delivered to the following:

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