

**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, #96

**Petitioner:**

JOSEPH B. BLAKE,  
Objector,

v.

**Respondents:**

ERNEST L. DURAN, JR. and BRADLEY JOHNSON,  
Proponents,

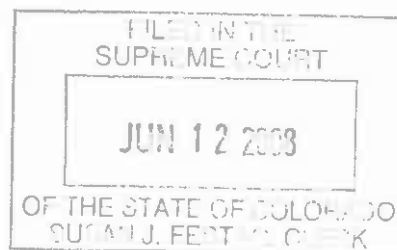
and

**Title Board:**

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

**Attorneys for Petitioner:**

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Case No. 08SA179

**PETITIONER'S ANSWER BRIEF TO TITLE BOARD'S OPENING BRIEF**

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Joseph B. Blake, a registered elector of the State of Colorado, by and through his attorneys, Fairfield and Woods, P.C., hereby files this Answer Brief to the Title Board's Opening Brief concerning Proposed Initiative 2007-2008 #96 ("Cost of Living Wage Increase") (the "Initiative").

### INTRODUCTORY STATEMENT

This issue appears to be moot. The *Rocky Mountain News* and *The Denver Post* both reported on June 11, 2008 and June 12, 2008 respectively, that the proponents intend to withdraw this Initiative. Specifically, Ernest Duran, one of the two proponents of this measure announced that he was removing this ballot measure immediately. See <http://rockymountainnews.com>; <http://www.denverpost.com>.

### ARGUMENT

**JUST AS INFLATION AND DEFLATION ARE SEPARATE AND DISTINCT CONCEPTS, MANDATING INCREASES IN WAGES OR SALARIES BASED UPON THE INCREASE IN THE COST OF LIVING, IS A DIFFERENT SUBJECT THAN PROHIBITING EMPLOYERS FROM DECREASING WAGES OR SALARIES WHEN THE COST OF LIVING DECLINES.**

**A. Prohibition to Decreases in Wages is a Separate Subject from Wage Increases because of a Rise in the Cost of Living.**

There are two unrelated purposes in the Initiative. First, employers must provide an annual wage or salary increase to account for a cost of living increase. Second,

were the measured cost of living were to decrease, the Initiative requires an employer to maintain wages and salaries, at their contemporaneous level. The purpose of the cost of living increase is to make sure real wages do not go down during an inflationary period. The purpose of the “no decrease” provision is to give employees a *de facto* raise during periods of deflation. The two separate subjects cannot be put into one initiative *See Waters Rights II*, 898 P.2d 1076, 1079 (Colo. 1995).

This Initiative is similar to the one that this Court rejected in *Waters Rights II*. There, an initiative 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 CPI measures inflation as experienced by consumers in their day-to-day living expenses.” [www.bls.gov/cpi/cpifaq](http://www.bls.gov/cpi/cpifaq). “Inflation has been defined as a process of continuously rising prices or equivalently, of a continuously falling value of money.” Deflation is a distinct concept from inflation. “Deflation is said to occur when the CPI value in one period is less than its value in the previous period.” <http://gbr.pepperdine.edu/033/deflation>.

When the CPI value declines, consumers are able to buy more goods with less money. *See* [www.businessdictionary.com](http://www.businessdictionary.com). If the economy were to go through a long-term deflationary period, the cost of goods would decrease. Not only would consumers pay less for “a basket of goods,” their employers would likely earn less from selling those goods. In such a situation, the provisions of the Initiative would trap employers and force them pay inflated wages and salaries that they cannot afford, thus inducing a greater unemployment rate.

The bar to a decrease in wages does not carry out the objective of increasing salaries in response to an increase in the cost of living. *See Waters Rights II*, 898 P.2d

1076, 1079 (Colo. 1995). The Title Board states that the key function of the measure is to ensure that wages keep up with costs. *See* Opening Brief at 5. This is, indeed, the measure’s stated goal. Citing no support and offering no argument, the Title Board baldly concludes that “[t]he requirement that wages cannot be reduced if the Consumer Price Index falls is consistent with the measure’s goal. . . . [and] relates directly to the underlying purposes of the measure.”

The *de facto* raise hidden in the Initiative and is not stated in the Title. It will come as a surprise to voters that they are requiring a raise, not just to match inflation, but a raise during deflation.

**B. The Title Board’s Supplemental Authority is Distinguishable.**

In lieu of answering Petitioner’s Opening Brief, the Title Board has filed a supplemental citation.<sup>1</sup> The initiative in the cited authority, *Advisory Opinion to the*

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<sup>1</sup> A citation to supplemental authorities is proper only after the party’s brief has been filed with this Court. *See* C.A.R. 28(b) (setting forth briefing requirements of appellee) and C.A.R. 28(j) (allowing new authority that “comes to a party’s attention after the party’s brief has been filed. . . .”). The Title Board has not filed an Answer Brief to Petitioner’s Opening Brief. Its Supplemental Citation cannot function as an Answer Brief. This Court should not consider the supplemental authority because it did not receive an Answer Brief from the Title Board. Because the Title Board did not answer Petitioner’s Opening Brief, this Court should consider all of the arguments of Petitioner’s Opening Brief admitted as true by the Title Board.

*Attorney General re Florida Minimum Wage Amendment*, 880 So.2d (Fla. 2004), is distinguishable from the Initiative.

The Florida initiative concerned the state's minimum wage rather than a cost of living increase for all workers employed by businesses with ten or more employees. The Florida initiative provided that "[t]he state minimum wage will start as \$6.15 per hour six months after enactment, and thereafter be indexed to inflation each year." *Id.* at 642 (emphasis added). The Florida initiative specifically ties the increases to inflation. *Id.* (defining "inflation" as referring only to the "continuing rise in the general price level"). In contrast to the description of the case in the supplemental authority, and unlike the Initiative #96, the Florida initiative did not add a new subject by expressly "prohibiting employers from reducing wages or salaries due to a decrease in cost of living."

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 TITLE BOARD'S OPENING BRIEF** was hand delivered to the following:

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