

**SUPREME COURT
STATE OF COLORADO**

101 West Colfax Avenue, Suite 800
Denver, CO 80202

**ORIGINAL PROCEEDING PURSUANT TO
§ 1-40-107(2), C.R.S. (2009)
Appeal from the Ballot Title Setting Board**

**IN THE MATTER OF THE TITLE, BALLOT
TITLE AND SUBMISSION CLAUSE FOR 2009-
2010 #45 ("HEALTH CARE CHOICE")**

Petitioners: Dr. Mark Earnest, Peter Leibig,
Albert Schnellbacher, Jr., AARP Colorado, the
Colorado Community Health Network, the
Colorado Coalition for the Medically
Underserved, and the Colorado Consumer Health
Initiative,

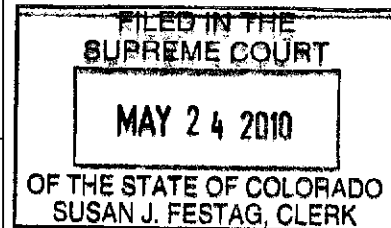
Respondents: Linda Gorman and Jon Caldara,

and

Title Board: William A. Hobbs; Dan Domenico;
and Dan Cartin,

**JOHN W. SUTHERS, Attorney General
MAURICE G. KNAIZER, Deputy Attorney
General***

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Registration Number: 05264
*Counsel of Record



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Case No. 10 SA 100

ANSWER BRIEF OF TITLE BOARD

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William A. Hobbs, Dan Domenico and Dan Cartin, as members of the Title Board, hereby submit their Answer Brief.

ARGUMENT

I. THE MEASURE CONTAINS A SINGLE SUBJECT.

Objectors argue that the proponents and the Title Board face a dilemma: the testimony of proponent Caldara before the Title Board concedes either that the measure (1) if interpreted narrowly, contains a term which is a catch phrase if used in the titles, or (2) if interpreted more broadly to avoid a catch phrase, contains multiple subjects (Objectors' Opening Brief, pp. 5, 10-14). The dilemma posed by Objectors is non-existent because the language of the measure and Caldara's explanation do not support either prong of Objectors' argument.

A review of the complete colloquy between Caldara and Board members discloses that Caldara was responding to the entirety of Objectors' presentation, including the arguments on single subject and catch phrase, and not only to the Objectors' catch phrase argument. He clarified the scope of the subject:

Caldara: Let me make this very clear. This is about a right to our health care choices.

And in connection therewith, we have taken two aspects of that clarified. That doesn't mean there are no other rights to health care choice. It means those rights will be left for interpretation by the courts, but that it is a basic right here in Colorado to do so.

...

We further define what that means in a couple of sections, but that is the key of it. And for that not to be included in a title would misrepresent this completely.

April 7, 2010, Tr. 49:7-24.

Mr. Hobbs: I think you answered an important question for me, but I just want to beat a dead horse maybe.

The first—the measure can be divided into two parts in my mind. The first part is the first sentence, “All persons shall have the right to health care choice,” and the second part is everything that follows. And I think I hear you saying is that that first sentence—well, the second part is part of the first sentence. But the first sentence carries with it more than what follows, that there really—your intention as a proponent is to grant in the Bill of Rights a right to health care choice, whatever that may mean, and what follows are two applications, examples whatever, but there's more to the measure than what is in the second part.

MR. CALDARA: Absolutely. I can't imagine that not being clear by the words that we've used here.

MR. HOBBS: Okay.

MR. CALDARA: Might be a right to expression, the right to free speech, a right to religious choice. I don't have the State Constitution with me, but you go over many of those rights in the Bill of Rights, and if you were to in the Bill of Rights, and if you were to—those don't mean it's cut and dried. We don't know how the courts will interpret the limit—express that. But those are in the Bill of Rights, and this is another one.

MR. HOBBS: So there may be things that aren't specifically mentioned. There may be applications that aren't specifically mentioned. Mr. Grueskin, I think, raised the issue of choosing your doctor, for example. So that would be arguably granted by this measure. It's not specifically talked about, but if the courts were to find that the right to health care choice includes the right to choose your doctor, then that would become a State Constitutional right.

MR. CALDARA: Yes.

April 7, 2010, Tr, 50:6-25; 51: 1-18.

A broad subject is not necessarily one that inherently violates the single subject prohibition. *In re Title, Ballot Title and Submission Clause and Summary for 1999-00 #256*, 12 P.3d 246, 254 (Colo. 2000). A proposal may have different effects or make policy choices that are not inevitably interconnected and still contain a single subject so long as the provisions are connected. *Id.* This is particularly true of declarations of broad constitutional principles. The single subject rule was not

intended to prevent voters from adopting broad constitutional standards that affect many parts of the constitution and state laws.

“This would be an unintended, undesirable consequence of the single subject requirement which has no support in the amendment’s history.”

In re Proposed Ballot Initiative on Parental Rights, 913 P.2d 1127, 1136 (Colo. 1996)(Mullarkey, J., concurring) (noting that an amendment such as the equal protection amendment, Colo. Const., art. II, § 29, could not be proposed under a strict reading of the single subject rule)

The measure establishes a constitutional principle: Colorado citizens have a right to health care choice. The measure also explicitly restricts in certain respects the state’s power to limit the right to health care choice. The state, either on its own or at the behest of the United States, may not “(a) require any person directly or indirectly to participate in any public or private health insurance plan, health coverage plan, health benefit plan, or similar plan; or (b) deny, restrict, or penalize the right or ability of any person to make or receive direct payments for lawful health care services.”

The measure is structurally similar to Colo. Const. art. II, § 10, which states that “[n]o law shall be passed impairing the freedom of

speech.” This provision establishes a constitutional right and simultaneously restricts the state’s power to limit or abrogate the right. Like the right to health care choice, the right to freedom of speech is broad. It includes pure speech, expressive conduct, *Marco Lounge, Inc. v. City of Federal Heights*, 625 P.2d 982 (Colo. 1981), and the right to read books anonymously, *Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044 (Colo. 2002). The scope of art. II, § 10 is continually evolving, yet no one can legitimately contend that it would be deemed to contain multiple subjects if it were proposed today as an initiated measure.

The measure introduces one new, albeit broad, constitutional right to health care choice. It contains a single subject.

II. THE PROPONENT CLEARLY STATED THE MEASURE’S MEANING AND PURPOSE.

Next, Objectors assert that Title Board could not set a title because it could not discern the meaning of the phrase “right to health care choice” (Objectors’ Opening Brief, pp. 14-17). This claim is without merit.

The Board must give deference to the proponent’s expression of the proposal’s intent and purpose. *In re Proposed Initiative on Unsafe Workplace*, 830 P.2d 1031, 1034 (Colo. 1992). If the Board can

comprehend the nature of the initiative well enough to state the single subject, then it must set a title. *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #25*, 974 P.2d 458, 469 (Colo. 1999).

Contrary to Objectors' argument, the board members acknowledged that the "right to health care choice" is the single subject. Mr. Hobbs stated, "It's a Constitutional right to health care choice." (April 7 2010, Tr. 63:22-23) Mr. Cartin agreed with Mr. Hobbs' analysis:

I guess what I would say first is that, kind of in response to Mr. Hobbs' line of questioning on what is exactly meant by the phrase, "All persons shall have the right to health care choice," and I think Mr. Grueskin has made some strong points in kind of reraising the single subject issue when I think the Board has rejected that.

(April 7, 2010, Tr. 62:2-13)

Objectors also contend that the Title Board did not have jurisdiction to set a title because the proponent's explanation constituted a substantial amendment to the measure, thereby violating § 1-40-105(2), C.R.S. (2009) (Objectors' Opening Brief, pp. 19-21). This contention must fail for two reasons.

First, section 105(2) provides that “[i]f any substantial amendment is made to the petition, other than an amendment in direct response to the comments of the direct of the legislative council and the office of legislative legal services, the amended petition shall be resubmitted to the directors...” The “amendments” are written amendments, not oral statements made by proponents during a colloquy with title board members about the meaning of the measure.

Second, the proponent did not change the meaning or interpretation of the measure. He merely clarified the import of the measure. Prior to the filing of the motion for rehearing, the Board did not have the benefit of Objectors’ comments. The Board and the proponent discussed substance of the measure in a summary manner. At the meeting at which the motion for rehearing was discussed, the proponents offered a more detailed, substantive explanation of the measure. The proponent did not change his interpretation of the measure to avoid a potential “catch phrase” problem. His statements responded to the single subject challenges posed by Objectors.

III. THE TITLES DO NOT CONTAIN A CATCH PHRASE.

Objectors also contend that the phrase “health care choice” is a catch phrase (Objectors’ Opening Brief, pp.22-28). In support of this contention, Objectors cite several advertisements and websites.

However, Objectors fail to note that the phrase, or variants thereof, has been used by all sides in the ongoing health care debate. Supporters of health care reform in both houses of Congress entitled their bills “Affordable Health Choices Act.” See, HR 3200, thomas.

loc.gov>THOMAS home>Bills> Resolutions-; S1679, thomas.loc.gov/cgi-bin/bdquery/z?d111;SN01679:-. In contrast, a bill was introduced in the Idaho House of Representatives this year entitled the “Idaho Health Freedom Act.” The bill declares “that every person within the state of Idaho is and shall be free to choose or decline to choose any mode of securing health care services without penalty or threat of penalty.” (See exhibit A, attached hereto). The Colorado General Assembly enacted S.B. 08-217, codified at § 25-5.1-125, C.R.S. (2009), and entitled “The Centennial Care Choices Program”.

Nor does the use of the term “health care choice”, or variants thereof, ensure additional votes in support of the votes. In 2008,

Arizona voters were presented with a ballot measure entitled, “Proposing an amendment to the constitution of Arizona: Amending Article II of the Arizona Constitution by adding section § 36 of Article II; Relating to Freedom of Choice in Health Care.”

<http://www.azsos.gov/election/2008/info/pubpamphlet/english/Prop101.htm>. The initiative failed.

[http://ballotpedia.org/wiki/index.php/Arizona_Proposition_101_\(2008\)](http://ballotpedia.org/wiki/index.php/Arizona_Proposition_101_(2008))

All sides in the health care debate have appropriated a form of the phrase “health care choice.” The phrase does not nothing more than describe a kind of choice the voters are being asked to approve. Voters have been inundated with news articles and programs describing various health care choice programs. Given the broad spectrum of persons and entities adopting the phrase or similar phrases, it is unlikely that the phrase will trigger an automatic favorable response.

IV. THE TITLES ACCURATELY REFLECT THE MEASURE.

Objectors contend that the titles misstate the content of the measure (Objectors’ Opening Brief, pp. 28-30). In particular, they argue that the measure does not prohibit the General Assembly from enacting a law in contravention of the measure even though such a law would be

unconstitutional. This argument assumes that the General Assembly will intentionally enact a law that contravenes the state constitution. This assumption is incorrect. The law recognizes a strong presumption that legislators will follow the mandate of the law. *In re Interrogatories by the Governor as to Senate Bill No. 121*, 163 Colo. 113, 120 P.2d 304, 308 (1967).


This Court does not demand that the Title Board draft the best possible titles. *Blake v. King*, 185 P.3d 142, 146 (Colo. 2008). The Court grants great deference to the Board in the exercise of its drafting authority, and it will reverse the Board's decision only if the titles are insufficient, unfair or misleading. *Id.*

The titles reflect the presumption that the General Assembly will not pass laws inconsistent with the measure. The General Assembly will not enact a law that contravenes a constitutional provision and consequently is unenforceable. This presumption is implicit in the measure, and the Title Board correctly noted it in the titles. The titles are accurate.

CONCLUSION

The actions of the Board should be affirmed.

JOHN W. SUTHERS
Attorney General


MAURICE G. KNAIZER, 05264*
Deputy Attorney General
Public Officials
State Services Section
Attorneys for Title Board
*Counsel of Record

AG ALPHA:
AG File:

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **ANSWER BRIEF OF TITLE BOARD** upon all parties herein by depositing copies of same by FedEx overnight, at Denver, Colorado, this 24th day of May 2010 addressed as follows:

Jon Caldara
13952 Denver West Parkway, Ste. 400
Golden, CO 80401

Mark G. Grueskin
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1001 17th Street, Ste. 1800
Denver, CO 80202

Linda Gorman
5479 S. Locust Street
Englewood, CO 80111



Daniel Darda

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 391

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO HEALTH AND SAFETY; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 90, TITLE 39, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE DEFINITIONS, TO PROVIDE A STATEMENT OF PUBLIC POLICY AND TO PROVIDE FOR ENFORCEMENT; AND AMENDING SECTION 67-1401, IDAHO CODE, TO REVISE DUTIES OF THE ATTORNEY GENERAL.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 90, Title 39, Idaho Code, and to read as follows:

CHAPTER 90

IDAHO HEALTH FREEDOM ACT

39-9001. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Health Freedom Act."

39-9002. DEFINITIONS. (1) "Health care services" shall mean any service, treatment, or provision of product for the care of physical or mental disease, illness, injury, defect or condition, or to otherwise maintain or improve physical or mental health, subject to all laws and rules regulating health service providers and products within the state of Idaho.

(2) "Mode of securing" shall mean to purchase directly or on credit or by trade, or to contract for third-party payment by insurance or other legal means authorized by the state of Idaho, or to apply for or accept employer or government sponsored health care benefits under such conditions as may legally be required as a condition of such benefits, or any combination of the same.

(3) "Penalty" shall mean any civil or criminal fine, tax, salary or wage withholding, surcharge, fee or any other imposed consequence established by law or rule of a government or its subdivision or agency that is used to punish or discourage the exercise of rights protected under this chapter.

39-9003. STATEMENT OF PUBLIC POLICY. (1) The power to require or regulate a person's choice in the mode of securing health care services, or to impose a penalty related thereto, is not found in the Constitution of the United States of America, and is therefore a power reserved to the people pursuant to the Ninth Amendment, and to the several states pursuant to the Tenth Amendment. The state of Idaho hereby exercises its sovereign power to declare the public policy of the state of Idaho regarding the right of all persons residing in the state of Idaho in choosing the mode of securing health care services.

1 (2) It is hereby declared that the public policy of the state of Idaho,
2 consistent with our constitutionally recognized and inalienable rights of
3 liberty, is that every person within the state of Idaho is and shall be free
4 to choose or decline to choose any mode of securing health care services
5 without penalty or threat of penalty.

6 (3) The policy stated herein shall not be applied to impair any right
7 of contract related to the provision of health care services to any person or
8 group.

9 39-9004. ENFORCEMENT. (1) No public official, employee, or agent
10 of the state of Idaho or any of its political subdivisions, shall act to
11 impose, collect, enforce, or effectuate any penalty in the state of Idaho
12 that violates the public policy set forth in section 39-9003(2), Idaho Code.

13 (2) The attorney general shall take such action as is provided in
14 section 67-1401(15), Idaho Code, in the defense or prosecution of rights
15 protected under this act.

16 SECTION 2. That Section 67-1401, Idaho Code, be, and the same is hereby
17 amended to read as follows:

18 67-1401. DUTIES OF ATTORNEY GENERAL. Except as otherwise provided in
19 this chapter, it is the duty of the attorney general:

20 (1) To perform all legal services for the state and to represent
21 the state and all departments, agencies, offices, officers, boards,
22 commissions, institutions and other state entities, in all courts and
23 before all administrative tribunals or bodies of any nature. Representation
24 shall be provided to those entities exempted pursuant to the provisions of
25 section 67-1406, Idaho Code. Whenever required to attend upon any court or
26 administrative tribunal the attorney general shall be allowed necessary and
27 actual expenses, all claims for which shall be audited by the state board of
28 examiners.

29 (2) To advise all departments, agencies, offices, officers, boards,
30 commissions, institutions and other state entities in all matters involving
31 questions of law.

32 (3) After judgment in any of the causes referred to in the first
33 subdivision, to direct the issuing of such process as may be necessary to
34 carry the same into execution.

35 (4) To account for and pay over to the proper officer all moneys
36 received which belong to the state.

37 (5) To supervise nonprofit corporations, corporations, charitable
38 or benevolent societies, person or persons holding property subject
39 to any public or charitable trust and to enforce whenever necessary
40 any noncompliance or departure from the general purpose of such trust
41 and, in order to accomplish such purpose, said nonprofit corporations,
42 corporations, charitable or benevolent societies, person or persons holding
43 property subject to any public or charitable trust are subject at all times
44 to examination by the attorney general, on behalf of the state, to ascertain
45 the condition of its affairs and to what extent, if at all, said trustee
46 or trustees may have failed to comply with trusts said trustee or trustees
47 have assumed or may have departed from the general purpose for which it was
48 formed. In case of any such failure or departure, the attorney general shall

1 institute, in the name of the state, any proceeding necessary to enforce
2 compliance with the terms of the trust or any departure therefrom.

3 (6) To give an opinion in writing, without fee, to the legislature or
4 either house thereof, or any senator or representative, and to the governor,
5 secretary of state, treasurer, state controller, and the superintendent of
6 public instruction, when requested, upon any question of law relating to
7 their respective offices. The attorney general shall keep a record of all
8 written opinions rendered by the office and such opinions shall be compiled
9 annually and made available for public inspection. All costs incurred in
10 the preparation of said opinions shall be borne by the office of the attorney
11 general. A copy of the opinions shall be furnished to the supreme court and
12 to the state librarian.

13 (7) When required by the public service, to repair to any county in
14 the state and assist the prosecuting attorney thereof in the discharge of
15 duties.

16 (8) To bid upon and purchase, when necessary, in the name of the state,
17 and under the direction of the state controller, any property offered for
18 sale under execution issued upon judgments in favor of or for the use of the
19 state, and to enter satisfaction in whole or in part of such judgments as the
20 consideration for such purchases.

21 (9) Whenever the property of a judgment debtor in any judgment
22 mentioned in the preceding subdivision has been sold under a prior judgment,
23 or is subject to any judgment, lien, or encumbrance, taking precedence of the
24 judgment in favor of the state, under the direction of the state controller,
25 to redeem such property from such prior judgment, lien, or encumbrance; and
26 all sums of money necessary for such redemption must, upon the order of the
27 board of examiners, be paid out of any money appropriated for such purposes.

28 (10) When necessary for the collection or enforcement of any judgment
29 hereinbefore mentioned, to institute and prosecute, in behalf of the state,
30 such suits or other proceedings as may be necessary to set aside and annul all
31 conveyances fraudulently made by such judgment debtors; the cost necessary
32 to the prosecution must, when allowed by the board of examiners, be paid out
33 of any appropriations for the prosecution of delinquents.

34 (11) To exercise all the common law power and authority usually
35 appertaining to the office and to discharge the other duties prescribed by
36 law.

37 (12) To report to the governor, at the time required by this code, the
38 condition of the affairs of the attorney general's office and of the reports
39 received from prosecuting attorneys.

40 (13) To appoint deputy attorneys general and special deputy attorneys
41 general and other necessary staff to assist in the performance of the duties
42 of the office. Such deputies and staff shall be nonclassified employees
43 within the meaning of section 67-5302, Idaho Code.

44 (14) To establish a medicaid fraud control unit pursuant to the
45 provisions of section 56-226, Idaho Code, and to exercise concurrent
46 investigative and prosecutorial authority and responsibility with county
47 prosecutors to prosecute persons for the violation of the criminal
48 provisions of chapter 2, title 56, Idaho Code, and for criminal offenses that
49 are not defined in said chapter 2, title 56, Idaho Code, but that involve

1 or are directly related to the use of medicaid program funds or services
2 provided through the medicaid program.

3 (15) To seek injunctive and any other appropriate relief as
4 expeditiously as possible to preserve the rights and property of the
5 residents of the state of Idaho, and to defend as necessary the state
6 of Idaho, its officials, employees and agents in the event that any law
7 or regulation violating the public policy set forth in the Idaho health
8 freedom act, chapter 90, title 39, Idaho Code, is enacted by any government,
9 subdivision or agency thereof.

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 391

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO HEALTH AND SAFETY; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 90, TITLE 39, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE DEFINITIONS, TO PROVIDE A STATEMENT OF PUBLIC POLICY AND TO PROVIDE FOR ENFORCEMENT; AND AMENDING SECTION 67-1401, IDAHO CODE, TO REVISE DUTIES OF THE ATTORNEY GENERAL.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 90, Title 39, Idaho Code, and to read as follows:

CHAPTER 90
IDAHO HEALTH FREEDOM ACT

39-9001. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Health Freedom Act."

39-9002. DEFINITIONS. (1) "Health care services" shall mean any service, treatment, or provision of product for the care of physical or mental disease, illness, injury, defect or condition, or to otherwise maintain or improve physical or mental health, subject to all laws and rules regulating health service providers and products within the state of Idaho.

(2) "Mode of securing" shall mean to purchase directly or on credit or by trade, or to contract for third-party payment by insurance or other legal means authorized by the state of Idaho, or to apply for or accept employer or government sponsored health care benefits under such conditions as may legally be required as a condition of such benefits, or any combination of the same.

(3) "Penalty" shall mean any civil or criminal fine, tax, salary or wage withholding, surcharge, fee or any other imposed consequence established by law or rule of a government or its subdivision or agency that is used to punish or discourage the exercise of rights protected under this chapter.

39-9003. STATEMENT OF PUBLIC POLICY. (1) The power to require or regulate a person's choice in the mode of securing health care services, or to impose a penalty related thereto, is not found in the Constitution of the United States of America, and is therefore a power reserved to the people pursuant to the Ninth Amendment, and to the several states pursuant to the Tenth Amendment. The state of Idaho hereby exercises its sovereign power to declare the public policy of the state of Idaho regarding the right of all persons residing in the state of Idaho in choosing the mode of securing health care services.

1 (2) It is hereby declared that the public policy of the state of Idaho,
2 consistent with our constitutionally recognized and inalienable rights of
3 liberty, is that every person within the state of Idaho is and shall be free
4 to choose or decline to choose any mode of securing health care services
5 without penalty or threat of penalty.

6 (3) The policy stated herein shall not be applied to impair any right
7 of contract related to the provision of health care services to any person or
8 group.

9 39-9004. ENFORCEMENT. (1) No public official, employee, or agent
10 of the state of Idaho or any of its political subdivisions, shall act to
11 impose, collect, enforce, or effectuate any penalty in the state of Idaho
12 that violates the public policy set forth in section 39-9003(2), Idaho Code.

13 (2) The attorney general shall take such action as is provided in
14 section 67-1401(15), Idaho Code, in the defense or prosecution of rights
15 protected under this act.

16 SECTION 2. That Section 67-1401, Idaho Code, be, and the same is hereby
17 amended to read as follows:

18 67-1401. DUTIES OF ATTORNEY GENERAL. Except as otherwise provided in
19 this chapter, it is the duty of the attorney general:

20 (1) To perform all legal services for the state and to represent
21 the state and all departments, agencies, offices, officers, boards,
22 commissions, institutions and other state entities, in all courts and
23 before all administrative tribunals or bodies of any nature. Representation
24 shall be provided to those entities exempted pursuant to the provisions of
25 section 67-1406, Idaho Code. Whenever required to attend upon any court or
26 administrative tribunal the attorney general shall be allowed necessary and
27 actual expenses, all claims for which shall be audited by the state board of
28 examiners.

29 (2) To advise all departments, agencies, offices, officers, boards,
30 commissions, institutions and other state entities in all matters involving
31 questions of law.

32 (3) After judgment in any of the causes referred to in the first
33 subdivision, to direct the issuing of such process as may be necessary to
34 carry the same into execution.

35 (4) To account for and pay over to the proper officer all moneys
36 received which belong to the state.

37 (5) To supervise nonprofit corporations, corporations, charitable
38 or benevolent societies, person or persons holding property subject
39 to any public or charitable trust and to enforce whenever necessary
40 any noncompliance or departure from the general purpose of such trust
41 and, in order to accomplish such purpose, said nonprofit corporations,
42 corporations, charitable or benevolent societies, person or persons holding
43 property subject to any public or charitable trust are subject at all times
44 to examination by the attorney general, on behalf of the state, to ascertain
45 the condition of its affairs and to what extent, if at all, said trustee
46 or trustees may have failed to comply with trusts said trustee or trustees
47 have assumed or may have departed from the general purpose for which it was
48 formed. In case of any such failure or departure, the attorney general shall

1 institute, in the name of the state, any proceeding necessary to enforce
2 compliance with the terms of the trust or any departure therefrom.

3 (6) To give an opinion in writing, without fee, to the legislature or
4 either house thereof, or any senator or representative, and to the governor,
5 secretary of state, treasurer, state controller, and the superintendent of
6 public instruction, when requested, upon any question of law relating to
7 their respective offices. The attorney general shall keep a record of all
8 written opinions rendered by the office and such opinions shall be compiled
9 annually and made available for public inspection. All costs incurred in
10 the preparation of said opinions shall be borne by the office of the attorney
11 general. A copy of the opinions shall be furnished to the supreme court and
12 to the state librarian.

13 (7) When required by the public service, to repair to any county in
14 the state and assist the prosecuting attorney thereof in the discharge of
15 duties.

16 (8) To bid upon and purchase, when necessary, in the name of the state,
17 and under the direction of the state controller, any property offered for
18 sale under execution issued upon judgments in favor of or for the use of the
19 state, and to enter satisfaction in whole or in part of such judgments as the
20 consideration for such purchases.

21 (9) Whenever the property of a judgment debtor in any judgment
22 mentioned in the preceding subdivision has been sold under a prior judgment,
23 or is subject to any judgment, lien, or encumbrance, taking precedence of the
24 judgment in favor of the state, under the direction of the state controller,
25 to redeem such property from such prior judgment, lien, or encumbrance; and
26 all sums of money necessary for such redemption must, upon the order of the
27 board of examiners, be paid out of any money appropriated for such purposes.

28 (10) When necessary for the collection or enforcement of any judgment
29 hereinbefore mentioned, to institute and prosecute, in behalf of the state,
30 such suits or other proceedings as may be necessary to set aside and annul all
31 conveyances fraudulently made by such judgment debtors; the cost necessary
32 to the prosecution must, when allowed by the board of examiners, be paid out
33 of any appropriations for the prosecution of delinquents.

34 (11) To exercise all the common law power and authority usually
35 appertaining to the office and to discharge the other duties prescribed by
36 law.

37 (12) To report to the governor, at the time required by this code, the
38 condition of the affairs of the attorney general's office and of the reports
39 received from prosecuting attorneys.

40 (13) To appoint deputy attorneys general and special deputy attorneys
41 general and other necessary staff to assist in the performance of the duties
42 of the office. Such deputies and staff shall be nonclassified employees
43 within the meaning of section 67-5302, Idaho Code.

44 (14) To establish a medicaid fraud control unit pursuant to the
45 provisions of section 56-226, Idaho Code, and to exercise concurrent
46 investigative and prosecutorial authority and responsibility with county
47 prosecutors to prosecute persons for the violation of the criminal
48 provisions of chapter 2, title 56, Idaho Code, and for criminal offenses that
49 are not defined in said chapter 2, title 56, Idaho Code, but that involve

1 or are directly related to the use of medicaid program funds or services
2 provided through the medicaid program.

3 (15) To seek injunctive and any other appropriate relief as
4 expeditiously as possible to preserve the rights and property of the
5 residents of the state of Idaho, and to defend as necessary the state
6 of Idaho, its officials, employees and agents in the event that any law
7 or regulation violating the public policy set forth in the Idaho health
8 freedom act, chapter 90, title 39, Idaho Code, is enacted by any government,
9 subdivision or agency thereof.