

<p>Supreme Court, State of Colorado Colorado State Judicial Building 101 W. Colfax Ave., #800 Denver, CO 80203</p>	<p>FILED IN THE SUPREME COURT</p> <p>MAY - 7 2010</p>
<p>ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2009) Appeal from the Ballot Title Setting Board</p> <p>IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2009- 2010 #51 ("RELIGIOUS LIBERTY")</p>	<p>OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK</p>
<p>Petitioners: Peter D. Shultz, Rabbi Benjamin Arnold, and Reverend Nathan Woodliff-Stanley,</p> <p>Respondents: Jennifer Kraska and Jessica Langfeldt,</p> <p>and</p> <p>Title Board: William A. Hobbs; Dan Domenico; and Sharon Eubanks</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorney: Mark G. Grueskin Isaacson Rosenbaum P.C. 1001 17th Street, Suite 1800 Denver, Colorado 80202</p> <p>Phone Number: (303) 292-5656 FAX Number: (303) 292-3152 E-mail: mgrueskin@ir-law.com Atty. Reg. #: 14621</p>	<p>Case Number: 10SA129</p>
<p>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2009-2010 #51</p>	

Dr. Peter D. Shultz, Rabbi Benjamin Arnold, and Reverend Nathan Woodliff-Stanley, (hereafter "Petitioners"), registered electors of the State of Colorado and organizations whose members include registered electors of the State of Colorado, hereby submit this petition for review to appeal the decision of the State Title Board in setting the title for Proposed Initiative 2009-2010 #51.

STATEMENT OF THE CASE

A. Procedural History of Initiative #51.

Jennifer Kraska and Jessica Langfeldt (hereafter "Proponents") proposed Initiative 2009-2010 #51 (hereafter "#51"). A review and comment hearing was held before designated representatives of the Offices of Legislative Council and Legislative Legal Services to address certain technical and substantive issues raised by this proposal. The Proponents submitted a final version of Initiative #51 to the Secretary of State, and the Title Board held a hearing on April 21, 2010 to establish the initiative's single subject and set a title. On April 28, Petitioners filed a Motion for Rehearing alleging violations of the single subject requirement and misleading title issues. Colo. Const., art. V, sec. 1(5.5); §§1-40-106 and 107, C.R.S. In response to the Motion for Rehearing and oral argument, certain aspects of the ballot title were addressed, but in other respects, the Motion was denied. On its own motion, the Title Board changed the single subject statement in the ballot title over the oral objections of both the Proponents and the Petitioners.

The final initiative text and the final ballot title, as certified by the Secretary, as well as materials presented by Petitioners at the Title Board hearing, are attached hereto as **Exhibit A**.

B. Jurisdiction.

Pursuant to § 1-40-107(2), C.R.S., any person who submits a motion for rehearing to the Title Board or any person who appears before the Board in connection with such motion may appeal the decision on the Title to this Court. Such appeal must contain certified copies of proposed initiative, the motion for rehearing, and the title set, *see* Exhibit A attached hereto, and must be within five days of the Board's decision. That time period excludes a weekend that intervenes between the Board meeting and the expiration of the five-day period. In re Title, Ballot Title and Submission Clause, and Summary for 1997-98 #62, 961 P.2d 1077, 1079 (Colo. 1998). Therefore, this appeal is timely filed.

GROUND FOR APPEAL

In violation of §§1-40-106 and 107, C.R.S., the measure violates the single subject requirement. In addition, the title set by the Board is misleading, does not correctly and fairly express the true meaning of the initiative, does not unambiguously state the principle of the provisions to be added to the Constitution, and will lead to voter confusion. The following is an advisory list of issues to be addressed in Petitioners' brief:

1. This initiative violates the single subject requirement, found in Article V, section 1(5.5) of the Colorado Constitution, as the measure coils in the folds of of "religious liberty" (or, in the terms used in the title, "the exercise of religious beliefs") broad-ranging restrictions on government authority that voters would never connect to the exercise of such "liberty" or "beliefs," including prohibitions on: (a) "withholding (any) benefits" to a person or religious organization; (b) "assessing (any) penalties" upon a person or religious organization; (c) exclusion of a person or religious organization from any "programs;" and (d) exclusion of a person or religious organization from any "facilities."

2. The ballot title is misleading, inaccurate, and not representative of the true intent of the proponents in violation of C.R.S. §§ 1-40-106, -107.

(a) The statement of the single subject – "burdens on the exercise of religious beliefs" – is not accurately or fully reflective of the initiative.

(b) The ballot title's incorporation of "sincerely held" to modify "religious beliefs," even though such phrase is found in the language of the initiative text, is prejudicial.

PRAYER FOR RELIEF

Petitioners respectfully requests that, after consideration of the parties' briefs, this Court determine that the title set for Initiative #51 comprises multiple subjects and that the Board lacked jurisdiction to set a title and, as such, that such

title be remanded to the Board with instructions that the measure be returned to Proponents for failure to comply with the single subject requirement or, alternatively, that the title be corrected to accurately and fairly represent the text of the initiative.

Respectfully submitted this 7th day of May, 2010.

ISAACSON ROSENBAUM P.C.

By: 
Mark G. Grueskin

ATTORNEYS FOR PETITIONERS

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2130 Ranch Drive
Westminster, CO 80234-2645

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2874 Elk Meadow Drive
Evergreen, CO 80439

Reverend Nathan Woodliff-Stanley
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CERTIFICATE OF SERVICE

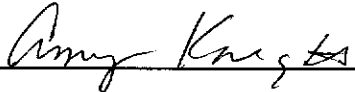
I hereby certify that on the 7th day of May, 2010, a true and correct copy of the foregoing PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2009-2010 #51 was placed in the United States mail, postage prepaid, to the following:

Jennifer Kraska
1535 Logan Street
Denver, CO 80203-1913

Jessica Langfeldt
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Maurice G. Knaizer, Esq.
Deputy Attorney General
Colorado Department of Law
1525 Sherman Street, 6th Floor
Denver, Colorado 80203





STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **BERNIE BUESCHER**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the text, motion for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2009-2010 #51".

..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 4th day of May, 2010.

A handwritten signature in cursive script that reads "Bernie Buescher". The signature is written in black ink on a white background and is positioned above a horizontal line.

SECRETARY OF STATE

EXHIBIT A

RECEIVED



APR 06 2010

*11:00am
MH*

ELECTIONS
SECRETARY OF STATE

Be it Enacted by the People of the State of Colorado:

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

Section 32. Religious liberty. (1) GOVERNMENT MAY NOT BURDEN A PERSON'S OR RELIGIOUS ORGANIZATION'S RELIGIOUS LIBERTY.

(2) THE RIGHT TO ACT OR REFUSE TO ACT IN A MANNER MOTIVATED BY A SINCERELY HELD RELIGIOUS BELIEF MAY NOT BE BURDENED UNLESS THE GOVERNMENT PROVES IT HAS A COMPELLING GOVERNMENTAL INTEREST IN INFRINGING THE SPECIFIC ACT OR REFUSAL TO ACT AND HAS USED THE LEAST RESTRICTIVE MEANS TO FURTHER THAT INTEREST.

(3) A BURDEN INCLUDES INDIRECT BURDENS SUCH AS WITHHOLDING BENEFITS, ASSESSING PENALTIES, OR AN EXCLUSION FROM PROGRAMS OR ACCESS TO FACILITIES.

Designated Representatives:

Jennifer Kraska
1535 Logan Street
Denver, CO 80203

Jessica Langfeldt
P.O. Box 558
Castle Rock, CO 80104

Final 5/1

RECEIVED



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17:00 AM

ELECTIONS
SECRETARY OF STATE

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Hale Westfall, LLP
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Denver, Colorado 80202
phone 720.904.6000
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April 5, 2010

The Honorable Bernie Buescher
Colorado Secretary of State
1700 Broadway, Suite 270
Denver, Colorado 80290

VIA HAND DELIVERY

Re: Initiative concerning Religious Liberty

Mr. Secretary:

Attached please find the final proposed language for Colorado Proposed Initiative Measure 2009-2010 #51 concerning Religious Liberty.

For your records, kindly note the contact information for the proponents of said ballot measure as follows:

Jennifer Kraska
1535 Logan Street
Denver, CO 80203

Jessica Langfeldt
P.O. Box 558
Castle Rock, CO 80104

The review and comment hearing with Legislative Legal Services, held pursuant to the Colo. Const., art. V, § 1(5), and Colorado Revised Statutes §§ 1-40-104 and 105, took place on Monday, March 29, 2010 at 1:30 p.m. in House Committee Room 0109. A memorandum outlining the purposes, comments and questions raised by the proposed measure was issued by Legislative Legal Services on March 23, 2010 in advance of that hearing. A copy of the ballot proposal as originally submitted, with formatting changes highlighted for your convenience, along with a copy of the Legislative Legal Services memorandum, has been attached hereto.

April 5, 2010
The Honorable Bernie Buescher
Page 2


All corrections to the final proposed language for Colorado Proposed Initiative Measure 2009-2010 #51 were made in response to issues raised in the March 23, 2010 memorandum, and fully discussed in the May 29, 2010 hearing. No changes constitute substantial amendments or revisions to the petition that were not in response to comments made by the staff of Legislative Council or the Office of Legislative Legal Services. As such, and pursuant to Rule 12 of Legislative Council Staff Rules, no follow-up hearing with Legislative Legal Services is required, and the proposal may proceed to the Title Board without an additional review and comment hearing.

Pursuant to the Colorado Constitution, Article V, Section 1(2), and Colorado Revised Statutes §§ 1-40-105 and 106, this letter also requests that the Title Board designate and fix a proper and fair title for this proposed constitutional amendment, together with a submission clause, at a public meeting to be held at its next meeting and at the hour determined by the Title Board.

Thank you for your consideration and assistance in this important matter.

Very truly yours,

HALE WESTFALL LLP



Ryan R. Call
Of Counsel

cc: Mr. Mauer, Director
Colorado Legislative Council Staff
State Capitol Building, Room 029
Denver, Colorado 80203-1784
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APR 28 2010

11:02

ELECTIONS
SECRETARY OF STATE

BEFORE THE TITLE SETTING BOARD

In the Matter of the Title, Ballot Title and Submission Clause Pertaining to Initiative 2009-2010 #51

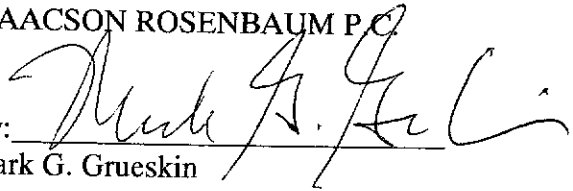
MOTION FOR REHEARING

Peter D. Shultz, Rabbi Benjamin Arnold, and Reverend Nathan Woodliff-Stanley, registered electors of the State of Colorado, through their counsel Isaacson Rosenbaum P.C., move for a rehearing concerning the title, ballot title, and submission clause set for Initiative 2009-2010 #51, and in connection therewith, allege:

- I. This initiative violates the single subject requirement, found in Article V, section 1(5.5) of the Colorado Constitution.
 - A. The measure is so indefinite as to lack a single subject.
 - B. It coils in the folds of the unburdened exercise of "religious liberty" a barrier against a broad, undefined, and unlimited set of "indirect burdens" which include:
 1. withholding any benefits, without qualification;
 2. assessing any penalties;
 3. exclusion from any programs; and
 4. exclusion from access to any facilities.
- II. The ballot title is misleading, inaccurate, and not representative of the true intent of the proponents in violation of C.R.S. §§ 1-40-106, -107.
 - A. The ballot title's incorporation of "sincerely held" to modify "religious beliefs," even though such phrase is found in the language of the initiative text, is prejudicial.
 - B. The ballot title's reference to "undue" burdens is unwarranted and inaccurate.
 - C. The ballot title fails to state that burdens may be imposed if a government has:
 1. a compelling interest; and
 2. uses the least restrictive means to further that interest.
 - D. The ballot title incorrectly states that burdens result from religious beliefs rather than from a person's or an organization's actions or inactions that may stem from such beliefs.
 - E. The ballot title fails to state that "burden" encompasses "indirect burdens" which would not typically be associated with restrictions on the exercise of religious liberty – namely, withholding benefits, assessing penalties, or exclusions from programs or access to facilities.
 - F. The ballot title fails to state that the initiative text uses the term "includes" to refer to indirect burdens affected by the measure, which indicates that the measure's breadth is greater than the listed burdens.

Respectfully submitted this 28th day of April, 2010.

ISAACSON ROSENBAUM P.C.

By: 
Mark G. Grueskin

1001 17th Street, Suite 1800
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Phone: (303) 292-5656
Fax: (303) 292-3152
ATTORNEYS FOR MOVANTS

Movants' addresses:

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Rabbi Benjamin Arnold
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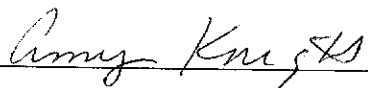
CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of April, 2010, a true and correct copy of Motion for Rehearing was served via United States Mail, postage prepaid, to the following:

Jennifer Kraska
1535 Logan Street
Denver, CO 80203-1913

Jessica Langfeldt
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Castle Rock, CO 80104-0558

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COPY
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APR 30 2010

BEFORE THE BALLOT TITLE SETTING BOARD
STATE OF COLORADO

ELECTIONS
SECRETARY OF STATE

PROPOSED INITIATIVE 2009-2010 #51

RESPONSE TO MOTION FOR REHEARING

Jennifer Kraska and Jessica Langfeldt, registered electors, pursuant to C.R.S. § 1-40-107, and through their undersigned counsel, hereby respond to Movants' Motion for Rehearing pertaining to Proposed Initiative 2009-2010 #51.

INTRODUCTION

Proposed Initiative 2009-2010 #51 concerning Religious Liberty (the "Initiative") presents a simple and straight-forward amendment to the Colorado Constitution to protect the religious liberty of Colorado's citizens. The essential language is as follows: "The right to act or refuse to act in a manner motivated by a sincerely held religious belief may not be burdened unless the government proves it has a compelling government interest in infringing the specific act or refusal to act and has used the least restrictive means to further that interest." (Initiative ¶ 3, attached as Ex. A)

The Movants' challenges here are based upon contrived interpretations of the Initiative. The task for the Title Board is to determine whether a measure contains a single subject and to set a title that fairly describes the essential features of the measure for the voters of Colorado without the use of an impermissible "catch phrase." The Initiative here unquestionably contains a single subject, and the title set by the Title Board fairly and accurately describes the intent and meaning of the proposed measure.

BACKGROUND

The ballot title as designated by the Title Board is: "An amendment to the Colorado constitution preventing the placement of undue burdens by government because of a person's or religious organization's sincerely held religious beliefs." (Title, attached as Ex. B) The submission clause as designated by the Title Board is: "Shall there be an amendment to the Colorado constitution preventing the placement of undue burdens by government because of a person's or religious organization's sincerely held religious beliefs?" (Submission Clause, attached as Ex. B) This title and submission clause fairly and accurately capture the essential features of the Initiative.

ARGUMENT

The Title Board is responsible for determining whether a proposed initiative contains a single subject as required by Colorado law. C.R.S. § 1-40-106.5. The Title Board must also act to "prevent surreptitious measures and apprise the people of the subject of each measure by the title" in order to "prevent surprise and fraud from being practiced upon voters." C.R.S. § 1-40-106.5(1)(e)(II). The Title Board has more than met its statutory obligations in this case.

I. The Title Board Properly Determined That the Proposed Initiative Is Limited to the Single Subject of Protecting Religious Liberty.

The principles underlying the single-subject requirement are set forth in the implementing legislation, C.R.S. § 1-40-106.5:

(I) To forbid the treatment of incongruous subjects in the same measure, especially the practice of putting together in one measure subjects having no necessary or proper connection, for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits;

(II) To prevent surreptitious measures and apprise the people of the subject of each measure by the title, that is, to prevent surprise and fraud from being practiced upon voters.

The purpose of the single subject requirement is to ensure that each initiative depends on its own merits to pass and to protect voters from surprise and fraud. In re Proposed Initiative 2001-2002 #43, 46 P.3d 438, 440 (Colo. 2002). To achieve these goals, Colorado law bars the proponent of an initiative from “joining two distinct and separate purposes that are not dependent upon or connected with each other.” In re Proposed Initiative 1999-2000 #258(A), 4 P.3d 1094, 1097 (Colo. 2000). “If the Initiative tends to effect or to carry out one general object or purpose, it is a single subject under the law. While the goals of the single subject requirement are important, the single subject requirement “must be liberally construed . . . so as not to impose undue restrictions on the initiative process.” In re Proposed Initiative 1997-1998 #74, 962 P.2d 927, 929 (Colo. 1998); see In re Proposed Initiative 1999-2000 #256, 12 P.3d 246, 255 (Colo. 2000) (holding that the court should “construe constitutional and statutory provisions governing the initiative process in a manner that facilitates the right of initiative instead of hampering it with technical statutory provisions or constructions”) (internal quotations omitted).

It is well-established that an initiative which specifically addresses several subsections of a single subject does not therefore violate the single subject rule. Thus, for example, the Court has held that the application of a proposed amendment applicable to magistrates, commissioners, and referees “clearly falls within the subject of the selection, retention, and removal of judicial officers.” In re Proposed Initiative 1999-2000 #245(f) and #245(g), 1 P.3d 739, 743 (Colo. 2000). Furthermore, the Court has repeatedly upheld initiatives which would impact a wide

range of activity by the State and private individuals. E.g., in re Proposed Initiative 1999-2000 #235(a), 3 P.3d 1219, 1226 (Colo. 2000) (conservation of open space).

Here, as identified by both the Title Board and by the staff of Legislative Legal Services as part of the review and comment process, the Initiative has a simple, single, definite purpose - to protect religious liberty. The Initiative would establish a basic constitutional principle that the State of Colorado and its political subdivisions may not infringe on the religious liberty of its citizens without a compelling need or interest. There are no incongruous subjects joined in the Initiative, nor is there any aspect of it that is indefinite. This measure constitutes, without a doubt, a single subject, and the Title Board acted properly in determining by a unanimous vote of its members that the measure constitutes a single subject.

II. The Title Board Set a Fair Title, but Clarifying Modifications May Be Made If The Title Board So Chooses.

The Title Board properly set the title for the Initiative in a manner that “fairly express[es] the true intent and meaning” of the initiative, in accordance with C.R.S. §§1-40-106 and 1-40-107. In no way was the title set by the Board misleading, inaccurate, or not representative of the true intent of the proponents or the meaning of the specific language of the measure.

A. The use of the terms “sincerely held” to modify “religious beliefs” is not prejudicial as the Movants allege, nor does the use of these terms independently or in connection with one another constitute an impermissible catch phrase. These terms and phrases simply describe the operation of the Initiative, and thus are not prejudicial.

The Movants bear the burden of showing that “sincerely held religious belief” is a catch phrase or prejudicial. See In re Proposed Initiative 1996-6, 917 P.2d 1277, 1281 (Colo. 1996). The “bare assertion” of the Movants is insufficient to meet this burden. Id. Rather, the Movants

must show how, “in the context of the contemporary political debate,” the phrase at issue has degenerated into a catch phrase. Id; see In re Amend Tabor No. 32, 908 P.2d 125, 130 (Colo. 1995) (holding that petitioners failed to show the existence of a catch phrase when they “fail[ed] to offer any evidence . . . beyond their bare assertion that political disagreement currently exists over the effect of a change in tax policy”). Furthermore, because “[t]he deterioration of a group of terms into an impermissible catch phrase is an imprecise process,” the Board must take special care to ensure that it does not create a catch phrase, but only recognizes existing catch phrases. In re Proposed Initiative 1997-1998 #105, 961 P.2d 1092, 1100 (Colo. 1998) (holding that “refund to taxpayers” is not a catch phrase).

To constitute a catch phrase, the phrase must be more than merely descriptive. In re Proposed Initiative 1999-2000 #258(A), 4 P.3d at 1100. (“We approach the potential existence of a catch phrase cautiously. Our task is to recognize terms that provoke political emotion and impede voter understanding, as opposed to those which are merely descriptive of the proposal”) (internal quotation omitted).

In this case, in contrast, the phrase “sincerely held religious beliefs” does no more than describe the scope and operation of the Initiative. See In re Proposed Initiative 1999-2000 #256, 12 P.3d at 257 (holding that “concerning the management of growth” was a neutral and “merely descriptive” phrase); In re Amend Tabor No. 32, 908 P.2d at 130 (collecting cases) (holding that descriptive phrases such as “adjusted net proceeds,” “adjusted gross proceeds,” and “Worker’s Choice of Care” are not catch phrases). The Title Board properly determined that “sincerely held religious beliefs” is not a catch phrase.

B. The proponents acknowledge that the term “undue” does not appear in the text of the measure itself; however, the use of the term “undue” by the Title Board was fair and appropriate. The use of the term “undue” in the context of the phrase “the placement of undue burdens by government” serves as a fair equivalent of the legal standard described with specificity in the measure itself, namely that burdens may be imposed by government on a person’s or religious organization’s religious liberty if the government proves it has a compelling governmental interest in infringing the specific act or refusal to act and has used the least restrictive means to further that governmental interest. While the term “undue” succinctly captures the meaning of a more lengthy and potentially cumbersome reference to the legal standard, the proponents suggest that substituting the term “improper” or “inappropriate” may more accurately convey the essential features of the measure and resolve the concerns expressed by the Movants. The proponents have no objection to substituting the phrase “the placement of undue burdens by government” with the phrase “the placement of improper burdens by government” within the language of the title and submission clause initially set by the Title Board.

C. An explicit recitation of the measure’s language providing that burdens may be imposed if the government has a compelling interest and has used the least restrictive means to further that interest is unnecessary for the Title Board to fulfill its statutory obligation to set a title for an initiative that “fairly express[es] the true intent and meaning” of the initiative in accordance with C.R.S. § 1-40-106(b) using plain and succinct language that voters may readily understand. However, if the Title Board believes an explicit recitation of this essential provision of the measure would be helpful to the voters, the proponents would not object to modifying the

ballot title and submission clause to read: "An amendment to the Colorado constitution preventing the imposition of burdens on the right to act or refuse to act because of a person's or religious organization's sincerely held religious beliefs unless the government proves it has a compelling governmental interest in infringing the specific act or refusal to act and has used the least restrictive means to further that interest."

D. The proponents disagree with the assertion of the Movants that the burdens referenced in the measure or the title and submission clause set by the Title Board result from religious beliefs. The measure makes clear that *government* is the source of the burdens that may be imposed or placed on the right to act or refuse to act because of the religious belief of a person or religious organization. However, to clarify that the source of the burdens which may be imposed on the right to act or refuse to act may originate with or be imposed by government, the proponents would not object to the modifications to the title and submission clause described and proposed in paragraph C above.

E. The proponents acknowledge that the term "indirect" was not explicitly included in the title and submission clause set by the Title Board in reference to the burdens which may be placed by government on a person's or religious organization's religious liberty; however, the inclusion of the term "indirect" is unnecessary. Section 3 of the measure, wherein the term "burden" is defined as including "indirect burdens," is merely definitional. It is not necessary for the Title Board to explicitly refer to every provision of the measure, as long as the Title Board properly sets the title for the Initiative in a manner that "fairly express[es] the true intent and meaning" of the initiative, in accordance with C.R.S. §§1-40-106 and 1-40-107.

F. The proponents acknowledge that the term “includes” was not explicitly included in the title and submission clause set by the Title Board in reference to the direct and indirect burdens which may be placed by government on the right of a person or religious organization to act or refuse to act in a manner motivated by a sincerely held religious belief; however, the inclusion of the term “includes” is unnecessary. Section 3 of the measure is merely definitional, and the Court has repeatedly upheld initiatives which would impact a wide range of activity, even where the specific enumeration of all the applications of the measure are not specifically expressed in the ballot title. E.g., in re Proposed Initiative 1999-2000 #235(a), 3 P.3d 1219, 1226 (Colo. 2000) (conservation of open space). As long as the Title Board properly sets the title for the Initiative in a manner that “fairly express[es] the true intent and meaning” of the initiative, in accordance with C.R.S. §§1-40-106 and 1-40-107, it has acted properly.

CONCLUSION

The Title Board properly determined that Proposed Initiative 2009-2010 #51 contains a single subject, and properly set the title for the Initiative in a manner that “fairly express[es] the true intent and meaning” of the initiative, in accordance with applicable Colorado law. In no way is the title misleading, inaccurate, or not representative of the true intent of the proponents or the meaning of the specific language of the measure.

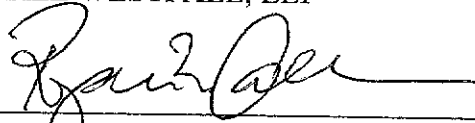
Nevertheless, the proponents would not object to the Title Board’s consideration of certain clarifying modifications to the title and submission clause, and respectfully propose the following alternative ballot titles:

“An amendment to the Colorado constitution preventing the placement of improper burdens by government on the right to act or refuse to act because of a person’s or religious organization’s sincerely held religious beliefs.”

“An amendment to the Colorado constitution preventing the imposition of burdens on the right to act or refuse to act because of a person’s or religious organization’s sincerely held religious beliefs unless the government proves it has a compelling governmental interest in infringing the specific act or refusal to act and has used the least restrictive means to further that interest.”

Respectfully submitted this 30th day of April, 2010

HALE WESTFALL, LLP



Ryan R. Call, No. 37207

Richard A. Westfall, No. 15295

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Denver, Colorado 80202

Phone: 720.904.6000

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Attorneys for Proponents

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of April, 2010, a true and correct copy of this Response to Motion for Rehearing was served via facsimile, hand delivery, and by United States Mail, postage prepaid, to the following:

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Isaacson Rosenbaum P.C.
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Attorney for Movants

The Honorable Bernie Buescher
Colorado Secretary of State
1700 Broadway, Suite 270
Denver, Colorado 80290
Fax: 303-869-4860 and 303-869-4861



RECEIVED



APR 06 2010

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MH*

ELECTIONS
SECRETARY OF STATE

Be it Enacted by the People of the State of Colorado:

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

Section 32. Religious liberty. (1) GOVERNMENT MAY NOT BURDEN A PERSON'S OR RELIGIOUS ORGANIZATION'S RELIGIOUS LIBERTY.

(2) THE RIGHT TO ACT OR REFUSE TO ACT IN A MANNER MOTIVATED BY A SINCERELY HELD RELIGIOUS BELIEF MAY NOT BE BURDENED UNLESS THE GOVERNMENT PROVES IT HAS A COMPELLING GOVERNMENTAL INTEREST IN INFRINGING THE SPECIFIC ACT OR REFUSAL TO ACT AND HAS USED THE LEAST RESTRICTIVE MEANS TO FURTHER THAT INTEREST.

(3) A BURDEN INCLUDES INDIRECT BURDENS SUCH AS WITHHOLDING BENEFITS, ASSESSING PENALTIES, OR AN EXCLUSION FROM PROGRAMS OR ACCESS TO FACILITIES.

Designated Representatives:

Jennifer Kraska
1535 Logan Street
Denver, CO 80203

Jessica Langfeldt
P.O. Box 558
Castle Rock, CO 80104



Final 51

Ballot Title Setting Board

Proposed Initiative 2009-2010 #51¹

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

An amendment to the Colorado constitution preventing the placement of undue burdens by government because of a person's or religious organization's sincerely held religious beliefs.

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

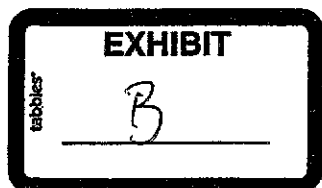
Shall there be an amendment to the Colorado constitution preventing the placement of undue burdens by government because of a person's or religious organization's sincerely held religious beliefs?

Hearing April 21, 2010:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 8:47 a.m.

¹ Unofficially captioned "Religious Liberty" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.



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ELECTIONS
SECRETARY OF STATE

BEFORE THE TITLE SETTING BOARD

In the Matter of the Title, Ballot Title and Submission Clause Pertaining to Initiative 2009-2010 #51

MOTION FOR REHEARING

Peter D. Shultz, Rabbi Benjamin Arnold, and Reverend Nathan Woodliff-Stanley, registered electors of the State of Colorado, through their counsel Isaacson Rosenbaum P.C., move for a rehearing concerning the title, ballot title, and submission clause set for Initiative 2009-2010 #51, and in connection therewith, allege:

I. This initiative violates the single subject requirement, found in Article V, section 1(5.5) of the Colorado Constitution.

- A. The measure is so indefinite as to lack a single subject.
- B. It coils in the folds of the unburdened exercise of "religious liberty" a barrier against a broad, undefined, and unlimited set of "indirect burdens" which include:
 - 1. withholding any benefits, without qualification;
 - 2. assessing any penalties;
 - 3. exclusion from any programs; and
 - 4. exclusion from access to any facilities.

II. The ballot title is misleading, inaccurate, and not representative of the true intent of the proponents in violation of C.R.S. §§ 1-40-106, -107.

- A. The ballot title's incorporation of "sincerely held" to modify "religious beliefs," even though such phrase is found in the language of the initiative text, is prejudicial.
- B. The ballot title's reference to "undue" burdens is unwarranted and inaccurate.
- C. The ballot title fails to state that burdens may be imposed if a government has:
 - 1. a compelling interest; and
 - 2. uses the least restrictive means to further that interest.
- D. The ballot title incorrectly states that burdens result from religious beliefs rather than from a person's or an organization's actions or inactions that may stem from such beliefs.
- E. The ballot title fails to state that "burden" encompasses "indirect burdens" which would not typically be associated with restrictions on the exercise of religious liberty – namely, withholding benefits, assessing penalties, or exclusions from programs or access to facilities.
- F. The ballot title fails to state that the initiative text uses the term "includes" to refer to indirect burdens affected by the measure, which indicates that the measure's breadth is greater than the listed burdens.

Respectfully submitted this 28th day of April, 2010.

ISAACSON ROSENBAUM P.C.

By: 
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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of April, 2010, a true and correct copy of Motion for Rehearing was served via United States Mail, postage prepaid, to the following:

Jennifer Kraska
1535 Logan Street
Denver, CO 80203-1913

Jessica Langfeldt
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1660 Wynkoop Street, Suite 900
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Ballot Title Setting Board

Proposed Initiative 2009-2010 #51¹

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

An amendment to the Colorado constitution concerning burdens on the exercise of religious beliefs, and, in connection therewith, prohibiting government from burdening a person's or religious organization's right to act or refusal to act in a manner motivated by a sincerely held religious belief unless the government proves a compelling governmental interest and uses the least restrictive means to further that interest, and providing that "burden" includes indirect burdens such as withholding benefits, assessing penalties, or an exclusion from programs or access to facilities.

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 burdens on the exercise of religious beliefs, and, in connection therewith, prohibiting government from burdening a person's or religious organization's right to act or refusal to act in a manner motivated by a sincerely held religious belief unless the government proves a compelling governmental interest and uses the least restrictive means to further that interest, and providing that "burden" includes indirect burdens such as withholding benefits, assessing penalties, or an exclusion from programs or access to facilities?

Hearing April 21, 2010:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 8:47 a.m.

Hearing April 30, 2010:

Motion for Rehearing granted in part to the extent Board amended titles; denied in all other respects.

Hearing adjourned 3:57 p.m.

¹ Unofficially captioned "**Religious Liberty**" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.