

SUPREME COURT OF COLORADO
101 West Colfax Avenue, Suite 800
Denver, Colorado 80203

Original Proceeding
Pursuant to Colo. Rev. Stat. §1-40-107(2)
Appeal from the Ballot Title Board

In the Matter of the Title, Ballot Title, and
Submission Clause for Proposed Initiative 2011-
2012 #78 ("Religious Freedom")

**Petitioners: REV. JASON HAYS and KRISTY
MILLIGAN**

v.

**Respondents: TOM MINNERY and MICHAEL
NORTON**

and

**Title Board: SUZANNE STAIERT; DANIEL
DOMENICO; and JASON GELENDER**

Attorneys for Petitioners:

Mark G. Grueskin, #14621
Heizer Paul Grueskin LLP
2401 15th Street, Suite 300
Denver, CO 80202
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FILED IN THE
SUPREME COURT,

APR 25 2012

OF THE STATE OF COLORADO
Christopher T. Ryan, Clerk

▲ COURT USE ONLY ▲

Case No. 12SA116

12SA116

**PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE
SETTING BOARD CONCERNING PROPOSED INITIATIVE 2011-
2012 #78 ("RELIGIOUS FREEDOM")**

Rev. Jason Hays and Kristy Milligan (“Petitioners”), registered electors of the State of Colorado, through their undersigned counsel, respectfully petition this Court pursuant to Colo. Rev. Stat. § 1-40-107(2), to review the actions of the Ballot Title Setting Board with respect to the setting of the title, ballot title, and submission clause for proposed Initiative 2011-2012 #78 (“Religious Freedom”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative #78

Tom Minnery and Michael Norton (hereafter “Proponents”) proposed Initiative 2011-2012 #78 (the “Proposed Initiative”). A review and comment hearing was held before representatives of the Offices of Legislative Council and Legislative Legal Services, as required by law. Thereafter, the Proponents submitted the original, amended and final versions of the Proposed Initiative to the Secretary of State so that a ballot title could be set.

A Title Board hearing was held on April 4, 2012 both to evaluate whether the initiative contained a single subject and, to the extent it did, set a title. The Board set a title at that meeting. On April 11, 2012, Petitioners filed a Motion for Rehearing and alleged violations of the single subject requirement and that the title was unfair and misleading. The rehearing was held on April 19, 2012, at which time the Title Board denied the motion for rehearing.

B. Jurisdiction

Petitioners are entitled to a review before the Colorado Supreme Court pursuant to Colo. Rev. Stat § 1-40-107(2). Petitioners timely filed the Motion for Rehearing with the Title Board. *See* C.R.S. §1-40-107(1). Additionally, Petitioners timely filed this Petition for Review within five days from the date of the hearing on the Motion for Rehearing. *Id.* §1-40-107(2).

As required by Colo. Rev. Stat. §1-40-107(2), attached to this Petition for Review are certified copies of: (1) the initiative filed by the Proponents; (2) the title and the submission clause set by the Title Board; (3) the Motion for Rehearing filed by the Petitioners; and (4) the ruling on the Motion for Rehearing. Petitioners are not satisfied with the Title Board's ruling on the Motion for Rehearing. Consequently, this matter is properly before the Colorado Supreme Court.

GROUND FOR APPEAL

In violation of Colo. Const., art. V, § 1(5.5) and C.R.S. § 1-40-106.5, the measure violates the single subject requirement. In addition, the Proponents failed to both attend the rehearing at which their measure was considered, as they are required to do by Colorado law. § 1-40-106(4)(a), (d). Finally, the title set by the Board is misleading, does not fairly and correctly express the true meaning of the initiative, does not unambiguously state the principles 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:

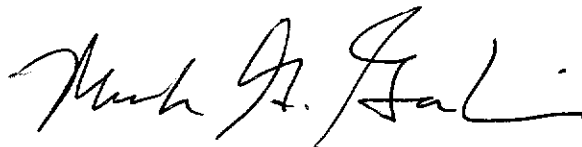
1. The Board erred in accepting jurisdiction to set a title on the Proposed Initiative because the Proponents undisputedly failed to comply with the statutory mandate that both proponents must attend any Board proceeding at which a ballot title for their initiative is considered. C.R.S. § 1-40-106(4)(a), (d).
2. The Board erred in finding that the Proposed Initiative comprised a single subject, when it clearly contains multiple subjects including general language concerning religious freedom in addition to broad, "indirect burdens" that are unrelated to one another and that voters would be surprised to find are shielded by this measure.
3. The Board erred by setting a confusing title that fails to inform voters about the wide-ranging "indirect burdens" that are contained in this measure, all of which are essential elements of this Proposed Initiative.

PRAYER FOR RELIEF

Petitioners respectfully request that, after consideration of the parties' briefs, this Court determine that the Proponents failed to comply with the statute requiring them both to attend the rehearing, that the title set for the Proposed Initiative

comprises multiple subjects, and that the title is neither fair nor accurate. As such, the actions of the Board are invalid, and the Proponents are prohibited from proceeding with these measures until such time as they correct the jurisdictional and title wording issues presented in this appeal.

Respectfully submitted this 25th day of April, 2012.



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ATTORNEYS FOR PETITIONERS

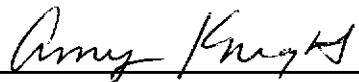
CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of April, 2012, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2011-2012 #78 (“RELIGIOUS FREEDOM”)** was served via U.S. mail, postage prepaid, to the following:

Tom Minnery
8655 Explorer Drive
Colorado Springs, CO 80920

Michael Norton
7951 E. Maplewood Avenue, Suite 100
Greenwood Village, CO 80111

Maurice G. Knaizer, Esq.
Office of the Colorado Attorney General
1525 Sherman Street, 7th Floor
Denver, Colorado 80203



Amy Knight



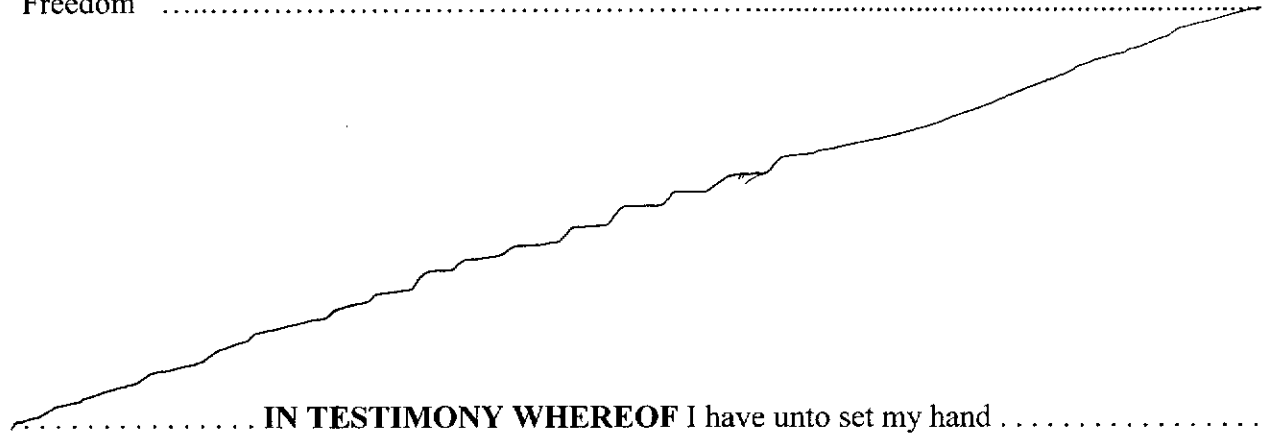
STATE OF COLORADO

DEPARTMENT OF
STATE

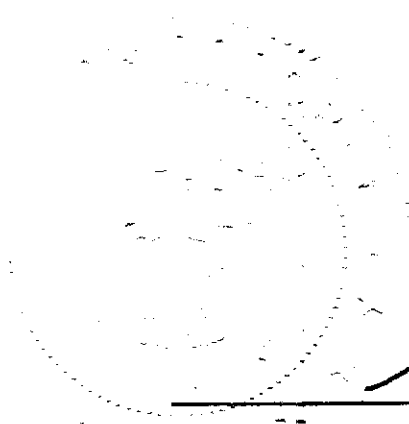
CERTIFICATE

I, **SCOTT GESSLER**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, motion for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2011-2012 #78 'Religious Freedom'".....



..... **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 18th day of January, 2012.



A handwritten signature in cursive script, reading "Scott Gessler", is written over a horizontal line.

SECRETARY OF STATE

Ballot Title Setting Board

Proposed Initiative 2011-2012 #78¹

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

An amendment to the Colorado constitution prohibiting government from burdening a person's or a religious organization's freedom of religion unless government uses the least restrictive means to achieve a compelling governmental interest.

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 prohibiting government from burdening a person's or a religious organization's freedom of religion unless government uses the least restrictive means to achieve a compelling governmental interest?

*Hearing April 4, 2012:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 1:36 p.m.*

*Hearing April 19, 2012:
Motion for Rehearing denied.
Hearing adjourned 11:23 a.m.*

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

RECEIVED

APR 11 2012

S. WARD
3:45 P.M.

BEFORE COLORADO STATE TITLE SETTING BOARD

**ELECTIONS/LICENSING
SECRETARY OF STATE**

In re Ballot Title and Submission Clause for 2011-2012 Initiative #78 ("Religious Freedom")

REV. JASON HAYS & KRISTY MILLIGAN, Objectors

MOTION FOR REHEARING

Pursuant to C.R.S. § 1-40-107, Objectors, Rev. Jason Hays and Kristy Milligan, registered electors of the State of Colorado, by and through his legal counsel, Heizer Paul Grueskin LLP, are not satisfied with the April 4, 2012 decisions of the Title Board that Initiative #78 comprises a single subject and further that the title set is fair and accurately expresses the meaning and intent of this measure.

- I. These ballot measures violate the single subject requirement, Colo. Const., art. V, § 1(5.5), including but not limited to the multiple topics of:
 - A. The measure is so indefinite as to lack a single subject.
 - B. The measure coils in the folds of unburdening "religious freedom" certain broad, undefined, and unlimited "indirect burdens" which include:
 - 1. withholding any "benefits;"
 - 2. assessing any "penalties;"
 - 3. exclusion from any "governmental programs;" and
 - 4. exclusion from access to any "governmental facilities."
 - C. The measure is effective whenever an undefined and thus unduly broad "act" or "refusal to act" by a person or a religious organization occurs.

- II. The Title Board did not provide a fair or accurate ballot title because it omitted any reference in the title to, among other things:
 - A. The fact that "indirect" burdens as well as direct are included in what this measure is intended to address.
 - B. The four types of specific indirect burdens to which the measure refers.
 - C. The fact that a person or religious organization must "act" or "refuse to act" to trigger the remedial portion of this measure.
 - D. "Freedom of religion" unfairly colors the balance of the ballot title. C.R.S. § 1-40-106(1).

E. "Compelling governmental interest" is not a phrase that will be commonly understood by voters and will lead to public confusion. C.R.S. § 1-40-106(3)(b).

Please set this matter for rehearing, pursuant to C.R.S. § 1-40-107(1).

Respectfully submitted this 11th day of April, 2012.

HEIZER PAUL GRUESKIN LLP



Mark G. Grueskin

Objectors' addresses:

Rev. Jason Hays, 809 Arrowwood Street, Longmont, CO 80503

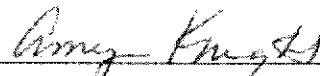
Kristy Milligan, 436 E. St. Vrain, Apt. 1, Colorado Springs, CO 80903

CERTIFICATE OF SERVICE

A true and accurate copy of this MOTION FOR REHEARING was sent to the designated representatives, by means of U.S. Mail, first class, postage prepaid:

Tom Minnery, 8655 Explorer Drive, Colorado Springs, CO 80920

Michael Norton, 7951 E. Maplewood Avenue, Suite 100, Greenwood Village, CO 80111



**ORIGINAL FINAL DRAFT SUBMITTED FOR
PRINTING OF THE PROPOSED INITIATIVE**

2011-2012 #78

Colorado Religious Freedom Amendment

RECEIVED

MAR 23 2012

10:00 A.M.
S. WARD

**ELECTIONS/LICENSING
SECRETARY OF STATE**

BALLOT TITLE:

AN AMENDMENT TO THE COLORADO CONSTITUTION EXPRESSING THE PUBLIC POLICY OF THE STATE OF COLORADO THAT GOVERNMENT MAY NOT BURDEN A PERSON'S OR RELIGIOUS ORGANIZATION'S FREEDOM OF RELIGION

TEXT:

SECTION 1. In the constitution of the state of Colorado, add section 32 to article II as follows:

- (1) GOVERNMENT MAY NOT BURDEN A PERSON'S OR RELIGIOUS ORGANIZATION'S FREEDOM OF RELIGION.
- (2) A PERSON'S OR RELIGIOUS ORGANIZATION'S RIGHT TO ACT OR REFUSAL 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 UPON 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 OF ONE OR MORE BENEFITS, ASSESSING ONE OR MORE PENALTIES, EXCLUSION FROM ONE OR MORE GOVERNMENT PROGRAMS, AND/OR EXCLUSION FROM ONE OR MORE GOVERNMENT FACILITIES.

SECTION 2. Effective date. This section shall take effect upon proclamation of the vote by the governor.