

<p><b>SUPREME COURT OF COLORADO</b>  2 East 14th Ave.  Denver, CO 80203</p> <hr/> <p>Original Proceeding  Pursuant to Colo. Rev. Stat. § 1-40-107(2)  Appeal from the Ballot Title Board</p> <hr/> <p>In the Matter of the Title, Ballot Title, and  Submission Clause for Proposed Initiative  2013-2014 #94 (“Duties of the Independent  Ethics Commission”)</p> <p><b>Petitioner: STACY CARPENTER</b></p> <p>v.</p> <p><b>Respondents: CHRIS FORSYTH  AND LAURIE FORSYTH</b></p> <p>and</p> <p><b>Title Board: SUZANNE STAIERT;  DANIEL DOMENICO; and JASON  GELENDER</b></p>	<p style="text-align: right;">DATE FILED: May 19, 2014 4:31 PM</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for Petitioner:</p> <p>Mark G. Grueskin, #14621  RECHT KORNFELD, P.C.  1600 Stout Street, Suite 1000  Denver, CO 80202  Phone: 303-573-1900  Facsimile: 303-446-9400  Email: <a href="mailto:mark@rechtkornfeld.com">mark@rechtkornfeld.com</a></p>	<p><b>Case No. 2014SA102</b></p>
<p><b>PETITIONER’S ANSWER BRIEF</b></p>	

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

Choose one:

It contains 1,225 words.

It does not exceed 30 pages.

The brief complies with C.A.R. 28(k).

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

*s/ Mark G. Grueskin* \_\_\_\_\_

Mark G. Grueskin

*Attorney for Petitioners*

**TABLE OF CONTENTS**

INTRODUCTION.....1

LEGAL ARGUMENT.....1

A. Initiative #94 violates the single subject requirement.....1

B. The ballot title does not reveal Proponents' admitted central intent in proposing the measure – eliminating the role of appellate courts in judicial disciplinary and disability matters.....2

CONCLUSION.....6

## TABLE OF AUTHORITIES

### Cases

<i>In re Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 246(e), 8 P.3d 1194 (Colo. 2000)</i> .....	1, 2
<i>In re Title, Ballot Title, Submission Clause for 2009-2010 No. 91, 235 P.3d 1071 (Colo. 2010)</i> .....	3, 4
<i>In re Matter of Title, Ballot Title and Submission Clause, and Summary for Proposed Petition Adding Section to Article VII (Petition Procedures), 900 P.2d 104 (Colo. 1995)</i> .....	4, 5

## INTRODUCTION

This appeal raises the Title Board's error on single subject and clear title grounds in setting a title for Initiative #94, the single subject of which was set by the Board as "the regulation of judicial conduct."

## LEGAL ARGUMENT

### **A. Initiative #94 violates the single subject requirement.**

The jurisdictional reassignment of disciplinary and disability-related duties, from the Commission on Judicial Discipline ("CJD") to the Independent Ethics Commission ("IEC"), violates the constitutional single subject rule. The Title Board responds that the Commission's various undertakings are all part of the same subject, citing *In re Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 246(e)*, 8 P.3d 1194 (Colo. 2000). Title Board Opening Brief at 9.

That initiative "propose[d] to amend constitutional provisions relating to the Commission on Judicial Discipline, its composition and method of appointment, and its procedures." *Id.* at 1195. It did not seek to limit the CJD's jurisdiction or specifically address how judicial disability issues would be dealt with or by whom. By repealing and reenacting Colo. Const., art VI, sec. 23(a) and 23(g), that initiative changed the Commission Judicial Commission's "method of selection and the terms of commissioners" as well

as "a number of implementing **provisions that are connected with the Commission's responsibility for judicial discipline.**" *Id.* at 1196 (emphasis added). Thus, the jurisdiction of the Commission generally or over disability issues specifically was not raised by that initiative. The single subject was determined to be "concerning judicial discipline," *id.*, because that was what the text of the initiative addressed.

This measure goes further and thus presents a different single subject problem – specifically, that discipline and disability are unrelated inquiries that are addressed with unrelated remedies. For the reasons discussed in Carpenter's Opening Brief, they are not part of the same subject.

**B. The ballot title does not reveal Proponents' admitted central intent in proposing the measure – eliminating the role of appellate courts in judicial disciplinary and disability matters.**

Proponents state that eliminating the role of appellate courts as to matters of judicial discipline is innocuous and even a mere "procedural element." Proponents' Opening Brief at 13. The Title Board indicates this is simply a detail of the measure. Title Board's Opening Brief at 11. Clearly, these statements run contrary to Proponents' written statements submitted to the Title Board that that the central motivating factor behind #94 is to ensure that no appellate precedent directly affects any complaints implicating judicial discipline.

Initiative #94 addresses appellate court authority in at least two ways. First, "In reaching its recommendation, the independent ethics commission **is not bound by the findings of an appellate court** regarding such conduct and **owes no deference to the findings of an appellate court.**" Proposed Art. VI, sec. 3(d) (emphasis added). Second, "If the recommendation of the (independent ethics) commission is supported by substantial evidence, **the supreme court shall accept the recommendation of the commission.**" Proposed Art. VI, sec. 3(f) (emphasis added).

There are two reasons why the Proponents actual statements of intent are pivotal and thus appropriate for reference in the titles. First, the Court is appropriately wary about reducing the authority of one branch of government when, because it is concealed within a complex measure, that change in governmental function will result in voter surprise. In *In re Title, Ballot Title, Submission Clause for 2009-2010 No. 91*, 235 P.3d 1071 (Colo. 2010), the proponents' initiative combined a new beverage container tax with a "prohibition on the General Assembly's constitutional powers afforded under article V of the Colorado Constitution." *Id.* at 1080. In its single subject analysis, the Court was concerned with the measure's "subterfuge." The Court reasoned that voters "might be surprised to learn that the initiative, if adopted, would deprive the legislators they elect from

exercising any authority over the basin roundtables and the interbasin compact committee for a substantial period of time." *Id.* at 1079. Initiative #94 achieves a similar imbalance by eliminating the role of appellate courts' in affecting judicial discipline or the cases that give rise to such complaints.

The second concern with concealing this issue from the voters is that #94 allows for *any* complaint that has been dismissed by the CJD to be refiled with the IEC. Thus, whatever substantive legal basis for the dismissal existed at an earlier time will no longer be a consideration if the matter is refiled at the IEC. If voters are going to endure the re-litigation of decades-old vendettas in the form of judicial discipline complaints, they should at least be told, when voting, that appellate court rulings that had disposed of these matters will no longer be considered in this process. Further, they should know that the Supreme Court's review is severely constrained under the terms of this initiative, such that the Court will only be able to examine the record for substantial evidence to sustain the IEC's decision, rather than to assess the law and its constitutionality as it does for all other cases before it. This dramatic change in the courts' roles is worthy of at least a brief phrase in an already brief title.

This dispute is virtually the same as *In the Matter of Title, Ballot Title and Submission Clause, and Summary for Proposed Petition Adding Section*



to Article VII (*Petition Procedures*), 900 P.2d 104 (Colo. 1995). There, the ostensible subject was petition procedures. But that measure also changed the appellate capacity of the Colorado courts by restricting their scope of review – changes the Court found comprised additional subjects beyond simply the petition process.

Among other things, that proposed initiative required courts to treat "shall" as a mandatory command, regardless of whether the context might indicate otherwise. *Id.* at 109. Initiative #94 states the Supreme Court "shall" uphold an IEC decision if there is any substantial evidence in the record, thus removing the authority of the General Assembly and the judiciary to set appellate standards as well as changing the way in which these cases have been reviewed to date. The *Petitions* measure also provided that this Court could uphold a challenge to a ballot title or an initiative on single subject grounds "only if beyond a reasonable doubt" and by a unanimous Supreme Court. *Id.* The "substantial evidence" restriction serves a comparable purpose for #94. Because these provisions restricting the work of the courts were not adequately addressed by the Board, "the title is inadequate" for "fail[ure] to provide a clear, concise summary of the Initiative." *Id.* The Initiative was remanded to the Board with orders to strike the title that had been set, on single subject grounds among others.

The similarities between these two measures are striking. Both constrain the appellate courts. Both limit this Court's review in a narrow set of cases and in a way that voters would not assume to be the case. In *Petition Procedures*, the overarching subject appeared to be the process of placing measures on the ballot; for #94, the overarching subject is said to be the process for meting out discipline to judges. The significantly changed role of appellate courts was addressed in neither title. For reasons set forth in *Petition Procedures*, the Court should remand #94 to the Board for appropriate relief to be granted there.

### CONCLUSION

The Title Board's decision should be reversed, either on single subject grounds or on clear title grounds, as set forth herein.

Respectfully submitted this 19<sup>h</sup> day of May, 2014.

*s/ Mark G. Grueskin*  
\_\_\_\_\_  
Mark G. Grueskin, #14621  
RECHT KORNFELD, P.C.  
1600 Stout Street, Suite 1000  
Denver, CO 80202  
Phone: 303-573-1900  
Facsimile: 303-446-9400  
Email: [mark@rechtkornfeld.com](mailto:mark@rechtkornfeld.com)  
**ATTORNEYS FOR PETITIONERS**

**CERTIFICATE OF SERVICE**

I, Laurene Uhlberg, hereby affirm that a true and accurate copy of the **PETITIONER'S ANSWER BRIEF** was sent this day, May 19<sup>th</sup>, 2014, via ICCES or overnight delivery, to:

Chris Forsyth  
3155 Ingalls St.  
Wheat Ridge, CO 80214

Laurie Forsyth  
3155 Ingalls St.  
Wheat Ridge, CO 80214

Sueanna P. Johnson  
Office of the Attorney General  
1300 Broadway, 6th Floor  
Denver, CO 80203

