Certification of Word Count: 4,550

SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	FILED IN THE SUPREME COURT JUL 16 2007 OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK
ORIGINAL PROCEEDING PURSUANT TO § 1-40-107(2), C.R.S. (2006) Appeal from Ballot Title Board	**COURT USE ONLY**
IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2007-2008 #31 POLLY BACA, KRISTY SCHLOSS AND RON MONTOYA, OBJECTORS Petitioner, v. VALERIE ORR AND LINDA CHAVEZ, PROPONENTS AND WILLIAM A. HOBBS, DANIEL CARTIN, AND DANIEL DOMENICO, TITLE BOARD, Respondents.	Case No.: 07SA197
JOHN W. SUTHERS, Attorney General MAURICE G. KNAIZER, Deputy Attorney General* 1525 Sherman Street, 5th Floor Denver, CO 80203 (303) 866-5380 Registration Number: 05264 *Counsel of Record	

OPENING BRIEF OF TITLE BOARD

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

PAGE

CASES

TABLE OF AUTHORITIES

PAGE

CONSTITUTIONS

STATUTES

OTHER AUTHORITIES

William A. Hobbs, Daniel Cartin and Daniel Domenico, as members of the Title Board (hereinafter "Board"), hereby submit their Opening Brief.

STATEMENT OF THE ISSUES

The Board adopts the statement of issues as set forth in the Petition for Review.

STATEMENT OF THE CASE

On May 18, 2007, Valerie Orr and Linda Chavez, the proponents ("Proponents), submitted Initiative 2007-2008 #31 (#31) to the Board. On June 6, 2007, the Board determined that the content of #31 constituted a single subject and proceeded to set a title. On June 13, 2007, Polly Baca, Kristy Schloss and Ron Montoya, the objectors ("Objectors"), filed a motion for rehearing. They contended that the measure contained more than one subject, that the titles did not clearly set forth the true meaning of the proposal, and that the titles contained a catch phrase. On June 20, 2007 the Board denied the motion for rehearing. The Objectors filed a timely appeal with this Court. A certified copy of the entire administrative record has been filed.

STATEMENT OF THE FACTS

#31 purports to amend the Colorado Constitution to add section 31 to article II. Section 1 of the measure provides that "[t]he State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting." Section 6 of the measure defines "state" to include the State of Colorado, political subdivisions thereof and government instrumentalities of or within the State." The measure does not prohibit the State from enacting laws or rules establishing "bona fide qualifications based on sex that are reasonably necessary to the normal operation of public employment, public education, or public contracting." (Section 3). The measure is not intended to invalidate any court order or consent decree existing on the effective date of the measure (section 4), and the measure does not prohibit actions "that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state." (Section 5). The penalties for violations of #31 are the same as those applicable to violations of existing Colorado anti-discrimination laws. (Section 7). The measure will apply only to actions taken after its effective date. (Section 2)

SUMMARY OF THE ARGUMENT

The measure includes only one subject: nondiscrimination by Colorado governments. The term "preferential treatment" is only a form of discrimination, and is not a separate subject.

Public contracting, public education and public employment are not separate subjects. They are directly connected to the goal of eliminating discrimination by governments.

The term "preferential treatment" is not a catch phrase.

The titles are fair, clear and accurate.

ARGUMENT

I. The Measure Contains Only One Subject: A Prohibition Against Discrimination By Colorado Governments

A. Introduction

Objectors contend that the Board should not have set titles because #31 contains more than one subject, thereby violating Colo. Const. art. V, § 1(5.5), which states:

> No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in the title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. If a measure contains more than one

> subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls.

A proposed initiative violates the single subject rule if "it relates to more than one subject, and (2) has at least two distinct and separate purposes that are not dependent upon or connected with each other." *In re Title, Ballot Title and Submission Clause for 2005-2006 #55*, 138 P.3d 273, 277 (Colo. 2006)(*#55*); *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002 #21 and #22*, 44 P.3d 213, 215 (Colo. 2002) (*#21*). A proposed initiative that "tends to effect or to carry out one general objective or purpose presents only one subject." *In re Ballot Title 1999-2000 #25,* 974 P.2d 458, 463 (Colo. 1999). The single subject rule both prevents joinder of multiple subjects to secure the support of various factions and prevents voter fraud and surprise. *In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-02 #43*, 46 P.3d 438, 442 (Colo. 2002) (*#43*).

The Court will not address the merits of a proposed initiative, interpret it or construe its future legal effects. *#21*, 44 P.3d at 215-16; *#43*, 46 P.3d at 443. The Court may engage in a limited inquiry into the meaning of terms within a proposed measure if necessary to review an allegation that the measure violates the single

subject rule. *#55*, 138 P.3d at 278. The Court will "determine unstated purposes and their relationship to the central theme of the initiative." *Id.* If the unstated theme is consistent with the general purpose, the single subject requirement will be met. *Id.* The single subject requirement must be liberally construed to avoid the imposition of undue restrictions on initiative proponents. *In re Title, Ballot Title and Submission Clause, and Summary for 1997-98 No. 74*, 962 P. 2d 927, 929 (Colo. 1998).

The opponent contends that #31 has three distinct and separate purposes which are not dependent or connected with each other: (1) "discrimination" and "preferential treatment" are distinct and separate subjects, (2) "public employment", "public contracting" and "public education" are each distinct and separate subjects and (3) the measure purports to prohibit discrimination while creating a new form of discrimination. For the following reasons, the Court must find that the measure includes only one subject.

B. Preferential Treatment Is A Form Of Discrimination

Objectors offer two arguments in support of their contention that "discrimination" and "preferential treatment" are two separate subjects. First, they argue that there are many forms of preferential treatment that are not

discriminatory. They contend that preferential treatment is often used as a remedy for past or existing discrimination, thereby making preferential treatment a subject separate from discrimination. The Court must reject this argument. The plain meaning of the language and court decisions show that the terms "discrimination" and "preference" are used synonymously.

The term "discrimination" means, "The effect of a law or established practice that confers privileges on a certain class or denies privileges on a certain class because of race, age, sex, nationality, religion or handicap." *Black's Law Dictionary* (8th ed. 1999) 500. "Preference" is defined as "the act of favoring one person or thing over another." *Id.* at 1217. "Conferring privileges on a certain class" is the same as favoring one person or thing over another." Thus, "discrimination" includes "preferences".

The caption of the proposal can provide significant guidance in interpreting a statute or constitutional amendment. *People v. Madden*, 111 P.3d 452, 457 (Colo. 2005). In this case, the title of the proposal is "Nondiscrimination by the State." This title implies that "nondiscrimination" includes prohibitions against both discrimination and preferential treatment.

Interpretation of similar provisions in other state constitutions also provides guidance. *People v. Rodriguez*, 112 P.3d 693, 699 (Colo. 2005). #31 is a

replication of measures that have been passed in California, Washington state and Michigan. Courts in these states have interpreted the terms "discrimination" and "preferential treatment". While not specifically addressing the issue of single subject, each of these courts has noted the strong and close relationship between "discrimination" and "preferential treatment."

In November 1996 voters approved Proposition 209, which added the following provision to the California Constitution:

> The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education or public contracting.

Cal. Const. art. 1, § 31.

The California Supreme Court discussed section 31 in *Hi-Voltage Wire Works, Inc. v. City of San Jose*, 12 P.3d 1068, 1081 (Cal. 2000). The California Supreme Court cited common definitions of "discriminate" and "preferential":

> "[D]iscriminate" means "to make distinctions in treatment: show partiality (*in favor of*) or prejudice (*against*). Webster's New World Dict. (3d college ed. 1988) p. 392; "preferential" means giving "preference", which is "a giving of priority or advantage to one person...over others." (*Id.* at p. 1062).

Id.

Based upon this language and the analysis of the ballot arguments, the court concluded that California voters intended the new provision "to restore the force of constitutional law to the principle articulated by President Carter on Law Day 1979: 'Basing present discrimination on past discrimination is obviously not right.'" *Id.* at 1083.

In a concurring opinion, Justice Mosk noted the strong relationship between discrimination and preferential treatment:

> Stated negatively, section 31 prohibits governmental actors from improperly burdening or benefiting any individual or group in the operation of public employment, public education, or public contracting. The prohibition is not limited to barring such actors from improperly assigning burdens or benefits themselves. Rather, it extends to barring them from enabling, facilitating, encouraging, or requiring private parties to do so as well. For the operation of each of the indicated activities involves private parties as well as governmental actors-in other words, the *operation* of each entails the *cooperation* of both. One of section 31's purposes is to preclude any invidious barrier or privileged entrance to participation.
>
> Stated positively, section 31 commands governmental actors to treat all individuals and groups equally in the operation of public employment, public education and public contracting. The command is not limited to compelling governmental actors to afford equal treatment themselves. Rather, it extends to compelling

> governmental actors to enable, facilitate, encourage, and require private parties to do so as well. Again, the operation of each of the indicated activities involves private parties as well as governmental actors, the *operation* of each entailing the *cooperation* of both. One of section 31's purposes is to remove all invidious barriers and privileged entrances to participation.
>
> Neither section 31's prohibition against improper assigning of any burden or benefit in the operation of public employment, public education, or public contracting, nor its command of equal treatment therein is limited solely to ends. Rather, both extend to means as well.

Id. at 1089. In essence, article 31 commands governmental actors "to treat all individuals and groups equally in order to remove all such barriers and entrances." *Id.* at 1091.

The Ninth Circuit reviewed the constitutionality of article 31. *Coalition for Economic Equity v. Wilson*, 122 F.3d 692 (9th Cir. 1997). The plaintiffs argued that the prohibitions against preferences violated their rights under the Equal Protection Clause of the Fourteenth Amendment. In the course of its discussion, the Ninth Circuit recognized preferences are a form of discrimination:

> That the Constitution *permits* the rare race-based or gender-based preference hardly implies that the state cannot ban them altogether. States are free to make or

> not make any constitutionally permissible legislative classification. Nothing in the Constitution suggests the anomalous and bizarre result that preference based on the most suspect and presumptively unconstitutional classifications-race and gender-must be readily available at the lowest level of government while preferences based on any other presumptively legitimate classification-such as wealth, age or disability are at the mercy of statewide referenda.

Id. at 708. Thus, "[t]o the extent that Proposition 209 prohibits race and gender preferences to a greater degree than the Equal Protection Clause, it provides greater protection to members of the gender and races otherwise burdened by the preference." *Id.* n. 18, at 709. Cf. *Parents Involved in Community Schools v. Seattle School Dist. No.1*, 72 P.3d 151, 167(Wash. 2003) (Madsen J., concurring)(terms "discriminate and "preference" "represent two sides of the same coin; the statute prohibits both more favorable and less favorable treatment on the basis of a person's or group's race."); *Coalition to Defend Affirmative Action v. Granholm*, 473 F.3d 237, 250 (6th Cir. 2006) (preferential treatment treated the same as discrimination under Equal Protection analysis).

The close relationship between preferential treatment and discrimination is presently recognized in the Colorado Constitution. In 1974, Colorado voters approved an amendment to Colo. Const. art. IX, § 8, which added the phrase, "nor

shall any pupil be assigned or transported to any public educational institution for the purpose of achieving racial balance." The Bluebook analysis set forth the following arguments in support of the amendment:

> 1. Adoption of the proposed amendment would reinforce the existing language of the Colorado constitution which prohibits "any distinction or classification of pupils...on account of race or color." Its adoption would reaffirm that Colorado voters do not want public policy decisions made on the basis of racial distinctions.
>
> ....
>
> 7. Public schools are established for the purpose of educating children without regard to racial, ethnic, or religious considerations. Schools should not be used for solving pervasive societal problems such as racial segregation; these problems go far beyond the realm of education...

Legislative Council of the Colorado General Assembly, *An Analysis of 1974 Ballot Proposals* (Research Publication no. 206) pp. 23, 24.

This provision was analyzed by Judge Richard Matsch in *Keyes v. Hispanic Educators*, 902 F.Supp.1274 (D.Colo. 1995). There, Judge Matsch considered the scope and impact of art. IX, § 8. He noted that the language of the amendment "prohibits the use of race or color as a basis for treating students differently and precludes the adoption of 'racial balance' as the goal in making pupil assignments." *Id.* at 1276. Judge Matsch noted that Colorado could seek to

achieve "pluralism and racial integration as positive objectives of public education" as long as it did not use race as a means to achieve these goals. *Id.* at 1285.

The United States Supreme Court has long acknowledged the close relationship between laws or actions that discriminate against an individual or a group based upon race, gender, nationality or ethnicity, and those that grant preferential treatment toward an individual or group. "Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake." *University of California Regents v. Bakke*, 438 U.S. 265, 308, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978). Because there is no substantive difference between "discrimination against" and "preferential treatment" towards individuals or groups based upon suspect classifications, the Court rejected the "argument that different rules should govern racial classifications designed to include rather than exclude." *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, slip. op. 05-908 (June 28, 2007) p. 34. "The idea that if race is the problem, race is the instrument with which to solve it cannot be accepted as an analytical leap forward." (Kennedy, J. concurring) *Id.* at 17.

There can be little doubt that the concept of "preferential treatment" historically has been treated as a subset of discrimination. Irrespective of whether preferential treatment should be constitutionally permitted, it cannot be denied that it is a form of discrimination.

Even if one agrees with Objectors' position that one can interpret "preferential treatment" as not necessarily equivalent to discrimination, one must also acknowledge that others disagree and equate any kind of race-based decision-making as discrimination. This initiative essentially asks the voters of Colorado to adopt the latter view. Objectors ask this Court to use the single subject requirement to adopt the former. It is not the function of the Board to choose sides in the philosophical and political debates that underlie this measure. Its function is merely to ascertain the meaning of the measure to determine whether it includes one subject. *#55*, 138 P.3d at 278.

C. Public Employment, Public Contracting, Public Contracting and Public Education Are Directly Related To The Purpose Of Eliminating Discrimination

Objectors also argue that #31 violates the single subject requirement because the measure combines in one proposal prohibitions of "preferential treatment" in the areas of public employment, public contracting and public education.

Objectors' argument is premised on the assumption that preferential treatment in the contexts of public contracts, public employment and public education are significantly different from each other. The Court must reject the claim.

Objectors' argument misses the primary purpose of the measure. The purpose of the measure is to prevent Colorado governments from establishing classifications based upon race, sex, color, ethnicity or national origin which may constitute "invidious barriers and privileged entrances to participation" in government-sponsored activities. *Hi Voltage Wire Works, Inc. v. City of San Jose*, 12 P.3d at 1089. (Mosk, J., concurring). The designation of the activities in which such classifications cannot be used is directly related to the purpose of the measure.

The Supreme Court implicitly rejected the notion that public education, public contracting and public employment are somehow different from other state activities for purposes of racial classification, even when the goal is to remedy past discrimination or to encourage racial diversity. The plurality discussed the Court's historic aversion to racial classifications in the context of government contracting, voting districts, allocation of broadcast licenses, and electing state officers. The plurality then concluded that public education, for purposes of racial classification,

should be treated no differently than these other areas of government activity. *Parents Involved in Community Schools,* slip op. at p. 39. "This Court has recently reiterated, however, that "'*all* racial classifications [imposed by government]...must be analyzed by a reviewing court under strict scrutiny.'" *Id.* at 34.

D. The "Bona Fide Qualifications" Exception Is Not A Separate Subject.

Objectors contend that the measure contains multiple subjects because it (1) extends the exception of bona fide qualifications on the basis of sex to public education and public contracts, and (2) creates a new form of discrimination within a measure that purports to prohibit discrimination. For the following reasons, the Court must reject this argument.

Objectors' first argument is based on the conclusion that the extension of the bona fide qualifications exception from employment law to public contracting and education is a new and novel concept. This provision simply recognizes existing law. Colorado law presently embodies the concept of bona fide reasons based on gender to refuse admission to places of public accommodation. Section § 24-34-601(3), C.R.S. (2006)("Notwithstanding any other provision of this section, it is not a discriminatory practice for a person to restrict admission to a place of public

accommodation to individuals of one sex if such restriction has a bona fide relationship to goods, services, facilities, privileges, advantages, or accommodations of such place of accommodation."). Nationally, California, Washington and Michigan have adopted measures similar, if not identical to #31.

Second, even if the measure does extend the concept to other government activities, this fact alone does not mean that an expanded use of the concept of bona fide qualifications constitutes a separate subject. *In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 #258(A)*, 4 P.3d 1094, 1098 (Colo. 2000) "All proposed constitutional and statutory amendments or laws would have the effect of changing the status quo in some respect if adopted by the voters." *Id.* The issue is whether the expansion to these areas is related to the subject.

Third, exceptions, by themselves, are not necessarily separate subjects. Exceptions are policy choices, and are permitted, even if they may have disparate impacts, as long as they are related to the purpose of the initiative. *In re Title, Ballot Title and Submission Clause and Summary for 1999-00 #256*, 12 P.3d 246, 254-55 (Colo. 2000).

Objectors' second argument is that the "bona fide qualification based on sex" exception creates a new form of discrimination and thereby constitutes a

separate subject. This argument is wrong on two counts. First, the measure does not establish a new form of discrimination. In 1972, Colorado voters enacted Colo. Const. art. II, § 29. This provision, entitled "Equality of the sexes", states, "Equality of rights under the law shall not be denied or abridged by the state of Colorado or any of its political subdivisions on account of sex." Colorado courts have interpreted this provision to prohibit differential treatment that is based on gender differences "but does not prohibit differential treatment based on reasonably and genuinely based physical differences." *Matter of the Estate of Musso*, 932 P.2d 853, 855 (Colo. App. 1997). In other words, Colorado law presently authorizes "bona fide qualifications based on sex [that] are reasonably necessary."

Second, if the differences are bona fide, then any differential treatment is not discrimination. Discrimination based on sex exists when there is no reason other than the gender of a person to treat that person differently. Discrimination based on sex does not exist if the person is treated differently because the person cannot perform a task due to "reasonably and genuinely based physical differences."[1]

[1] Under Objectors' theory, the "Equality of the sexes" amendment would not qualify as a measure containing a single subject. It applies to all laws and actions of the government, including, but not limited to, public contracts, public education and public employment.

For these reasons, the Court must conclude that #31 contains a single subject.

II. The term "preferential treatment" is not a catch phrase.

A catch phrase consists of "words that work to a proposal's favor without contributing to voter understanding. By drawing attention to themselves and triggering a favorable response, catch phrases generate support for a proposal that hinges not on the content of the proposal itself, but merely on the wording of the catch phrase." *In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 #258(A)*, 4 P.3d 1094, 1100 (Colo. 2000). Catch phrases "form the basis of a slogan for use by those who expect to carry out a campaign for or against an initiated constitutional amendment that prejudices the voter understanding of the issues presented to the voters." *In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 #227 and #228,* 3 P.3d 1, 6-7 (Colo. 2000). Whether words constitute a catch phrase must be determined in the context of contemporary political debate. The "task is to recognize terms that provoke political emotion and impede voter understanding, as opposed to those which are merely descriptive of the proposal." *Id.* The objectors must offer some evidence that the wording

constitutes a catch phrase. *Id.* at p. 7. The court will recognize but not create catch phrases.

Objectors did not present any evidence that the phrase "preferential treatment" generates support or the measure in a manner independent of the content of the proposal. As noted earlier, measures containing the phrase "preferential treatment" have been presented to California, Michigan and Washington state voters. Objectors did not offer any documents that the phrase was used in elections in those states in a manner that provoked political passions in the context of ongoing political debate.

In addition, the use of the term will enhance voter understanding. The prohibition against "preferential treatment" is a concept long embodied in both the state and federal constitutions. As this Court noted, both constitutions "prohibit any "*preferential treatment* to religion in general or to any denomination in particular." *Americans United for Separation of Church and State Fund, Inc. v. State*, 648 P.2d 1072, 1082 (Colo. 1982)(emphasis added); see also, *Conrad v. City and County of Denver,* 656 P.2d 662, 672 (Colo. 1982)("the Preference Clause flatly prohibits any *preferential treatment* cognizable under the Colorado Constitution.")(emphasis added.). As with the Preference Clause, the phrase

"prohibition against preferential treatment" conveys the notion that the government must remain neutral in matters regarding race, sex, color, ethnicity and national origin. The term neither is designed to, nor does, provoke political emotion.

III. THE TITLES ARE FAIR, CLEAR AND ACCURATE.

Section § 1-40-106(3), C.R.S. (2006) establishes the standard for setting titles. It provides:

> In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general effect of a "yes" or "no" vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly state the true intent and meaning thereof, together with the ballot title and submission clause, shall be completed within two weeks after the first meeting of the title board...Ballot titles shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and shall be in the form of a question which may be answered "yes" (to vote in favor of the proposed law or constitutional amendment) or "no" (to vote against the proposed law or constitutional amendment and which shall unambiguously state the principle of the provision sought to be amended or repealed.

The titles must be fair, clear, accurate and complete. *#256*, 12 P.3d at 256. However, the Board is not required to set out every detail. *#21*, 44 P.3d at 222. In setting titles, the Board may not ascertain the measure's efficacy, or its practical or

legal effects. *#256*, 12 P.3d at 257; *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #246(e)*, 8 P.3d 1194, 1197 (Colo. 2000). The Court does not demand that the Board draft the best possible title. *#256*, at p. 219. The Court grants great deference to the Board in the exercise of its drafting authority. *Id.* The Court will reverse the Board's decision only if the titles are insufficient, unfair or misleading. *In re Proposed Initiative Concerning "Automobile Insurance Coverage"*, 877 P.2d 853, 857 (Colo. 1994).

Objectors complain the measure, by the recognition of "bona fide qualifications based on sex", creates a new form of discrimination, which must be disclosed in the title. As noted above, this exception does not sanction a new form of discrimination. It merely creates an exception to the mandate that the governments remain neutral.

Moreover, even if the phrase does create and sanction a new form of discrimination, it is sufficient that the Board mentions the change. Objectors do not contend that the terminology in the titles does not convey the general understanding of the effect of a "yes" or "no" vote. See, *In re Title, Ballot Title and Submission Clause and Summary on "Obscenity"*, 877 P.2d 848, 850 (Colo. 1994). Rather, they allege that the titles do not discuss the change from existing law. The

Board is not required to discuss how the proposed initiative would change existing law. *#246(e)*, 8 P.3d at 1197; *In re Title, Ballot Title and Submission Clause, And Summary Concerning "Fair Fishing"*, 877 P.2d 1355, 1362 (Colo. 1994) ("Board is not required to state the effect that the measure will have on other constitutional or statutory provisions.")

Objectors also contend that the phrase preferential treatment should have been included in the opening clause of the title. This argument is based on the presumption that preferential treatment is somehow different from discrimination. As noted at pages 5-13 of this brief, this presumption is incorrect.

Finally, Objectors contend that the titles are unfair because the introductory phrase does not include (1) the definition of "the state", (2) a reference to the fact that the prohibition applies to public employment, public contracting and public education, an (3) a reference that the prohibitions apply only to race, sex, color, ethnicity and natural origin. If all of these factors were placed in the introductory clause, then the only required change would be the elimination of the phrase "in connection therewith" in the second line of the titles. This modification would not add to the understanding of the measure by the voters.

CONCLUSION

For the reasons stated herein, the Court must approve the action of the Title Board.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **OPENING BRIEF OF TITLE BOARD** upon all parties herein by depositing copies of same in the United States mail, Express Mail, at Denver, Colorado, this 16th day of July 2007 addressed as follows:

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