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BEFORE THE TITLE SETTING BOARD OF COLORADO .

In the Matter of Initiative 2007-08 #38 (Prohibition on Certain Conditions of Employment),
Ryan Frazier and Julian Jay Cole, Proponents

MOTION FOR REHEARING

On behalf of Dorothy R. Wright, a registered elector of the State of Colorado, the law firm of Isaacson Rosenbaum P.C., submits this Motion for Rehearing because Initiative 2007-08 #38 contains multiple subjects.

On August 1, 2007, the Title Board met and found that this initiative meets the single subject requirement. It then amended the staff's draft title and adopted the following ballot title language:

An amendment to the Colorado Constitution concerning participation in a labor organization as a condition of employment, and in connection therewith, prohibiting an employer from requiring that a person refrain from voluntary affiliation with or financial support of a labor organization or requiring that a person be a member or pay any moneys to a labor organization or to any other third party in lieu of payment to a labor organization; prohibiting a deduction of any moneys from an employee's wages, earnings, or other compensation to be paid to a labor organization without prior approval from the employee; and creating a misdemeanor penalty for a person who violates the provisions of the section.

Subsection (2) of the measure prohibits requiring that a person may be employed if he or she: (a) becomes or remains a member of a labor organization; (b) ends a voluntary relationship with a labor organization; (c) pays any money to a labor organization; or (d) pays money to any third party if such payments are required of a labor organization's members. This portion of the initiative reflects the single subject statement that was proposed by staff, endorsed by Proponents, and adopted by the Board: "concerning participation in a labor organization **as a condition of employment.**" (Emphasis added.)

In contrast, Subsection (3) prohibits any wage deduction for "union dues, fees, assessments or other charges" that are "held for, transferred to, or paid over to a labor organization" unless authorized by an employee. This provision is not couched as a "condition of employment" in the initiative text. Instead, subsection (3) is a flat-out ban on wage deductions unless approved by an employee.

Colloquially, these two concepts are known as "right to work" and "paycheck protection." They are not part of the same subject for several reasons.

First, these are substantively separate subjects. "Right to work" presents voters with the question of whether union membership should be a prerequisite to employment. "Paycheck protection" presents voters with the question of how employers determine whether deductions can be taken from employee wages. There is no common theme between these topics, or at least no theme definite enough to pass the single subject test.

Second, there is no necessary or proper connection between "right to work" and "paycheck protection." *See* C.R.S. § 1-40-106.5(1)(e)(I). The "paycheck protection" provisions are not functionally related to restricting conditions under which a worker may be employed. Likewise, the "right to work" provisions are not functionally related to the proposed litmus test for authorizing paycheck deductions. Independent considerations factor into each of the two segments of this initiative, and voters should not be forced to balance entirely distinct issues when voting on a ballot measure.

Third, "paycheck protection" is a surreptitious element of Initiative 2007-08 #38 and thus violates the single subject requirement. *See* C.R.S. § 1-40-106.5(1)(e)(II). Based on the title, voters will think that they are voting on the single subject statement relating to whether a person may be required to belong to a union in order to work at a given job. That is part of this package, but voters will also be voting on a new consent requirement for deductions from wages. The single subject statement endorsed by the Board and the Proponents does not – and could not – encompass this second subject.

WHEREFORE, it is respectfully requested that the ballot title and submission clause adopted for Initiative 2007-08 #38 be stricken and the initiative be returned to the Proponents.

Submitted this 8th day of August, 2007.

ISAACSON ROSENBAUM P.C.



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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of August, 2007, a true and correct copy of the foregoing **Motion for Rehearing** was sent via U.S. mail, first class postage prepaid, to the Proponents, through their legal counsel, at the following address:

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