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ELECTIONS
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COLORADO TITLE SETTING BOARD

In re Proposed Initiative 2007-2008 # 74 (“**Liability of Business Entities and Their Executive Officials–Criminal Liability**”¹)

MOTION FOR REHEARING

On behalf of Joseph B. Blake, a registered elector of the State of Colorado, the undersigned hereby files this Motion for Rehearing in connection with the Proposed Initiative 2007–2008 #74 (“Liability of Business Entities and Their Executive Officials-Criminal Liability”, hereinafter described as the “Initiative”) which the Title Board (“Board”) heard on March 19, 2008.

1. The title and submission clause is confusing and misleading.

The Board’s chosen language for the titles and summary must be fair, clear, and accurate, and the language must not mislead the voters. *In re Ballot Title 1999-2000 #258(A)*, 4 P.3d 1094, 1098 (Colo. 2000). “In fixing titles and summary, the Board’s duty is ‘to capture, in short form, the proposal in plain, understandable, accurate language enabling informed voter choice.’” *Id.* (quoting *In re Proposed Initiative for 1999-2000 No. 29*, 972 P.2d 257, 266 (Colo. 1999)). *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104*, 987 P.2d 249 (Colo. 1999) (initiative’s “not to exceed” language, repeated without explanation or analysis in summary, created unconstitutional confusion and ambiguity). This requirement helps to ensure

¹ Unofficially captioned “**Liability of Business Entities and Their Executive Officials–Criminal Liability**” by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

that voters are not surprised after an election to find that an initiative included a surreptitious, but significant provision that was obfuscated by other elements of the proposal. *In the Matter of the Title, Ballot Title and Submission Clause for Proposed Initiative 2001-02 #43*, 46 P.3d 438, 442 (Colo. 2002). Eliminating a key feature of the initiative from the titles is a fatal defect if that omission may cause confusion and mislead voters about what the initiative actually proposes. *Id.*; see also, *In re Ballot Title 1997-1998 #62*, 961 P.2d at 1082. See *In re Proposed Initiative 1999-2000 #37*, 977 P.2d 845, 846 (Colo. 1999) (holding that titles and summary may not be presented to voters because more than one subject and confusing).

Here, the ballot title and submission clause fail to meet this standard. First, the single-subject statement is different from that which was accepted in Nos. 57 and 73. The first sentence of the ballot title provides, “extending the criminal liability of a business entity to its executive officials for the entity’s failure to perform a specific duty imposed by law . . .”. The measure then goes on to provide, “and, in connection therewith, conditioning an executive official’s liability upon his or her knowledge of the duty imposed by law and of the business entity’s failure to perform such a duty”. The latter portion of the sentence suggests that this portion is current law, which it is not.

The Initiative fails to define who falls within the purview of “executive official.” Indeed, an executive official does not include an agent or high managerial agent as defined by the current statute. Most common definitions of executives include a person having administrative or managerial authority in a business organization. Clearly, the implication of “executive official” would create this impression in the voter’s mind. However, the definition of executive official

under the Initiative is much narrower than the impression created. This is also confusing and misleading to the voter or signer of the petition.

The Initiative's title and submission clause fails to inform the voter that in order for defendants to avail themselves of the affirmative defense that they would need to make their full disclosure to the attorney general prior to being charged. The title and submission clause further fails to apprise the voters of the applicable penalties involved herein.

In Ballot Title 258(A) the titles were materially defective for failure to include a key feature of the initiative which resulted in misleading and confusing voters. The title board failed to articulate in the titles that school districts and schools cannot be required to offer bilingual programs. Voters could assume that parents of non-English speaking students will have a meaningful choice between an English immersion program and a bilingual program, and thus, favor the proposal as assuring both programs. "It is well established that the use of catch phrase or slogans in the title, ballot title and submission clause, and summary should be carefully avoided by the Board. *In re Ballot Title 1999-2000 #258(A)*, *supra*, 4 P.3d at 1100; *In re Amend Tabor No. 32*, 908 P.2d 125, 130 (Colo. 1995). This rule recognizes that the particular words chosen by the Title Board should not prejudice electors to vote for or against the proposed initiative merely by virtue of those words' appeal to emotion. *Id*; *see also*, *In Re Ballot Title 1999-2000 # 215*, 3 P.3d 11, 14 (Colo. 2000) (allowing the term "open mining" as sufficiently clear because defined by statute).

Please set a rehearing in this matter for the next Title Board Meeting.

Respectfully submitted this 26th day of March, 2008.

FAIRFIELD AND WOODS, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of March 2008, a true and correct copy of the foregoing **MOTION FOR REHEARING** was Hand Delivered and sent U.S. Mail as follows to:

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