BEFORE THE BALLOT TITLE SETTING BOARD
STATE OF COLORADO

PROPOSED INITIATIVE 2007-2008 #82

MOTION FOR REHEARING

Jessica Peck Corry, a registered elector, pursuant to C.R.S. § 1-40-107, and through her counsel, hereby moves the Title Board for rehearing of Proposed Initiative 2007-2008 #82.

INTRODUCTION

Like Proposed Initiative #61, this Initiative makes use of a broad opening sentence followed by a second sentence which radically reduces the scope of the opening language. It will thus have the effect of deceiving voters. Furthermore, the Proposed Initiative lumps multiple subjects together in an impermissible attempt at logrolling. Finally, the Title set by the Title Board fails to distinguish this Proposed Initiative from Initiative #31.[1]

ARGUMENT

I. Proposed Initiative #82 is a Surreptitious Measure

The Proposed Initiative suffers from the same flaw as Proposed Initiative #61. It gives with one hand in the form of an expansive opening sentence and takes with the other in the form of a definition that radically restricts the first sentence. The fact that this definitional wordplay is more explicit in Proposed Initiative #82 than it was in the Proponents' previous attempt does not make it any less deceptive.

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[1] Initiative #31 has been designated Amendment 46. For the convenience of the Board, it is referred to as Initiative #31 in this brief.

The use of carefully defined terms is not inherently objectionable. What makes the definitional language in the Proposed Initiative surreptitious rather than clarifying is the artificially narrow definition adopted. Preferential treatment is generally understood to include more than "adopting quotas or awarding points." (Proposed Initiative #82 ¶ 1, attached as Ex. A); *see, e.g.*, Motion For Rehearing on Initiative #31, ¶ 1(a) (attached as Ex. B), arguing that "there are many forms of preferential treatment . . . [including] diversity recruitment programs, gender specific health care programs, [and] provision of official notices in a language other than English"; *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995) (allowing certain narrowly tailored racial classification). One can not, consistent with the single subject requirement, define a word to mean something so far from its commonly accepted definition that the word itself looses all meaning. "Definitions should not be too artificial. For example-'dog' includes a cat is asking too much of the reader; 'animal' means a dog or a cat would be better." *In re Delbridge*, 61 B. R. 484, 489 (Bkrtcy. E. D. Mich. 1986) (internal quotation omitted).

One of the critical roles of the Title Board is "[t]o prevent surreptitious measures and apprise the people of the subject of each measure by title, that is, to prevent surprise and fraud being practiced upon voters." C.R.S. § 1-40-106.5(e)(II); *In re Proposed Initiative 1997-1998 #74*, 962 P.2d 927, 928 (Colo. 1998) (holding that "[t]he single-subject requirement is intended to prevent voters from being confused or misled . . ."); *In re Proposed Initiative on Parental Choice in Educ.*, 917 P.2d 292, 294 (Colo. 1996) (holding that the "single-subject requirement is designed to protect the voters from fraud and surprise . . ."); *In re Proposed Initiative 1997-98*

#84, 961 P.2d 456, 458 (Colo. 1998) (holding that "the single subject requirement is intended to protect voters against surprise and fraud").[2]

The use of complex exceptions to a purported general rule is "the epitome of a surreptitious measure." *In re Proposed Initiative 2001-02 #43*, 46 P.3d 438, 447 (Colo. 2002) (holding that "[t]hose voters in favor of repealing TABOR may vote for this initiative believing that it will permit just this. Only later will they discover that an obscure line in the initiative for which they voted exempts TABOR from the provision apparently permitting its repeal"). The average voter would likely be surprised that a ballot initiative that purported to broadly prohibit discrimination and preferential treatment was craftily drafted so as to apply to only a small subset of preferential treatment.

Because Proposed Initiative #82 is a surreptitious measure, the Board must refuse to set a title for it.

II. Proposed Initiative #82 Does Not Constitute A Single Subject

C.R.S. § 1-40-106.5(1)(e)(I) forbids "the practice of putting together in one measure subjects having no necessary or proper connection, for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits." Proposed Initiative #82 does precisely that.

Proposed Initiative #82 is concerned with three subjects. It seeks to express the State's opposition to discrimination and preferential treatment; to constitutionalize and clarify existing laws prohibiting certain forms of discrimination and preferential treatment; and to preserve the authority of the State to continue current programs designed to remedy past discrimination. (*See*

[2] Colorado's single subject prohibition has special protections against fraudulent and surreptitious measures.

4/16/08 Title Board Hearing Recording at 3:28-5:20; 8:30-9:00) "The constitutional prohibition against an initiative proposing more than a single subject prevents the proponents of an initiative from joining multiple subjects into a single initiative in the hope of attracting support from various factions which may have different or conflicting interests." *In re Proposed Initiative 1999-2000 #29*, 972 P.2d 257, 264-265 (Colo. 1999) (internal quotation omitted). Logrolling is apparent when "[a] voter favoring one of the subjects but not the other is required to vote for both of them in an effort to secure approval of the subject he or she would like to have enacted." *Id* at 265. Such is clearly the case here. To take only a single example, a voter might be opposed to present discrimination, and thus inclined to vote for that portion of the Proposed Initiative which constitutes an expression of opposition to discrimination, without also wishing to preserve the authority of the State to continue programs to remedy past discrimination. This constitutes prohibited logrolling.

III. The Title Set by the Board Must Clearly Distinguish Proposed Initiative #82 from Initiative #31

Proposed Initiative #82 is integrally related to Initiative #31. It addresses the same subject as Proposed Initiative #31, and uses extremely similar language, including identical opening sentences. The Proponents of Proposed Initiative #82 have been clear that the Proposed Initiative is intended to offer voters an alternative to Initiative #31.

When two proposed initiatives address the same topic, the Board must select a title that allows voters to clearly distinguish between them. C.R.S. § 1-40-106(3)(b) ("ballot titles shall not conflict with those selected for any petition previously filed for the same election...."); *In re Proposed Initiated Constitutional Amendment Concerning Fair Treatment II* 877 P.2d 329, 332 (Colo. 1994) ("What is prohibited are conflicting ballot titles **which fail to distinguish**

between overlapping **or conflicting** proposals") (emphasis added). The Title presently set by the Board fails to adequately distinguish between Initiative #31 and Proposed Initiative #82, and is thus fatally flawed. (*See* Initiative #31 Title, attached as Ex. C; Proposed Initiative #82 Title, attached as Ex. D)

A. The Single Subject Statement of Proposed Initiative #82 Must Be Distinct From That of Initiative #31

The use of a distinctive single subject statement is necessary because Proposed Initiative #82 and Initiative #31 address different subjects and treat discrimination and preferential treatment in radically different ways. Initiative #31 is concerned with prohibiting the State from engaging in discrimination and preferential treatment. Proposed Initiative #82 is concerned with constitutionalizing and clarifying existing laws prohibiting certain forms of discrimination and preferential treatment while preserving the authority of the State to continue current programs designed to remedy past discrimination. The single subject statement must make this distinction clear.[3]

Proposed Initiative #82 has an opening sentence that is identical to that in Initiative #31.[4] This identical language has the obvious potential to cause voter confusion if it is carried over into the Title. At the hearing, the Board expressed a desire that the Title for Proposed Initiative #82

[3]A proposed Title, Ballot Title, and Submission Clause which they believe adequately describe Proposed Initiative #82, which is attached as Ex. E.

[4] The Objector does not wish to suggest that the Proponents chose to use this identical language in a deliberate attempt to confuse the voters. However, although pressed on the point at the hearing, the Proponents have never been able to explain why they consider it necessary to copy the opening sentence of Initiative #31. While the Proponents have been clear that they wished to include a clear statement of opposition to discrimination and preferential treatment in their initiative, it would certainly have been possible to draft such a statement in language different from that used in Initiative #31.

not be more specific than the Title for Initiative #31 simply because it had been proposed later. However, the Proponents' decision to use language identical to that in Initiative #31 may require the use of a more specific title to distinguish the two initiatives. Because this is the result of a deliberate tactical choice by the Proponents, it will not result in unfairness to them.

B. The Ballot Title Must Draw Attention to the Artificially Narrow Definition of "Preferential Treatment" in Proposed Initiative #82

Proposed Initiative #82 limits the term "preferential treatment" to "adopting quotas or awarding points solely on the basis of race, sex, color, ethnicity, or national origin." (Proposed Initiative 82 ¶ 1) In contrast, Proposed Initiative #31 would apply to the full range of preferential treatment. The ballot title for Proposed Initiative #82 must make it clear to voters that Proposed Initiative #82 is intended to apply only to a small subset of preferential treatment, while Proposed Initiative #31 applies to all preferential treatment.

C. The Ballot Title Must Draw Attention to the Broad Exception for Federal Program Eligibility in Proposed Initiative #82

Proposed Initiative #82 contains an exception for "action taken to establish or maintain eligibility for any federal program." (Proposed Initiative #82 ¶ 2) Proposed Initiative #31 also contains an exception related to federal programs, but it is significantly narrower. The exception in Proposed Initiative #31 applies only to discrimination or preferential treatment 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." (Proposed Initiative #31 ¶ 5, attached as Ex. F) The federal programs exception in Proposed Initiative #82 is sufficiently broad to potentially encompass a range of discriminatory activity that would be prohibited under Initiative #31. This is an important distinction that is nowhere made clear in the Title set by the Board.

D. The Ballot Title Must Draw Attention to the Broad Exception for Consent Decrees in Proposed Initiative #82

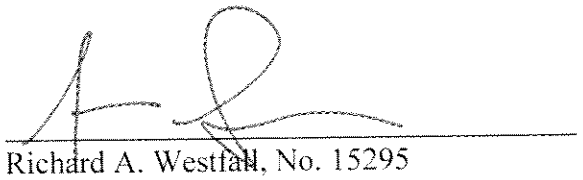
Paragraph 3 of Proposed Initiative #82 creates an exception for new consent decrees. In contrast, Proposed Initiative #31 contains an exception only for existing consent decrees. (Proposed Initiative #31 ¶ 4) This distinction is significant because Proposed Initiative #82 allows the State the authority to voluntarily engage in otherwise prohibited discrimination by entering into consent decrees. In contrast, Initiative #31 would only preserve existing consent decrees and does not contain an open ended exception for continuing discrimination by the State. The Title must make this important distinction clear to the voters.

CONCLUSION

The Proposed Initiative is as surreptitious initiative that will have the effect of deceiving the voters. In addition it contains three separate subjects. The Board thus may not set a title. Moreover, if the Board were to set a title, it must comply with the statutory requirement that it set a title which will enable voters to clearly distinguish between initiatives addressing the same subject matter. The current title for Proposed Initiative #82 fails to clearly distinguish it from Initiative #31. It is thus fatally flawed, and must be rejected.

Respectfully submitted April 23, 2008

HALE FRIESEN, LLP

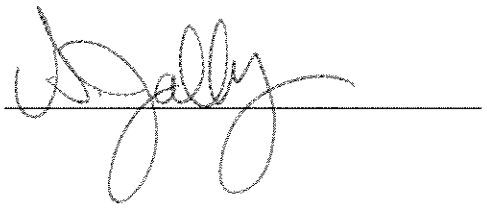


Richard A. Westfall, No. 15295
Aaron Solomon, No. 38659

CERTIFICATE OF SERVICE

I certify that on this 23d day of April, 2008, the foregoing **MOTION FOR REHEARING** was served on the following via U.S. Mail:

Melissa Hart
2260 Clermont Street
Denver, Colorado 80207



Final #82

Be It Enacted by the People of the State of Colorado:

Article II of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

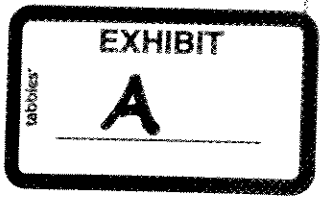
Section 32. Equal Opportunity

(1) 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. "PREFERENTIAL TREATMENT" MEANS ADOPTING QUOTAS OR AWARDING POINTS SOLELY ON THE BASIS OF RACE, SEX, COLOR, ETHNICITY, OR NATIONAL ORIGIN.

(2) NOTHING IN THIS SECTION SHALL BE INTERPRETED AS PROHIBITING ACTION TAKEN TO ESTABLISH OR MAINTAIN ELIGIBILITY FOR ANY FEDERAL PROGRAM.

(3) NOTHING IN THIS SECTION SHALL BE INTERPRETED AS INVALIDATING OR PROHIBITING ANY COURT-ORDERED REMEDY OR CONSENT DECREE IN A CIVIL RIGHTS CASE.

(4) AS USED IN THIS SECTION, "STATE" MEANS, BUT IS NOT LIMITED TO, THE STATE OF COLORADO, ANY AGENCY OR DEPARTMENT OF THE STATE, ANY PUBLIC INSTITUTION OF HIGHER EDUCATION, ANY POLITICAL SUBDIVISION, OR ANY GOVERNMENTAL INSTRUMENTALITY OF OR WITHIN THE STATE.



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BALLOT TITLE BOARD

MOTION FOR REHEARING

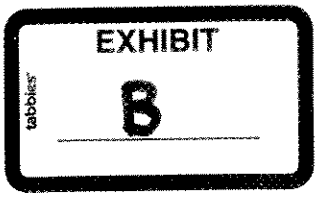
IN RE PROPOSED INITIATIVE FOR 2007-2008 # 31 ("PROHIBITION ON DISCRIMINATION AND PREFERENTIAL TREATMENT BY COLORADO GOVERNMENTS")

Polly Baca, Kristy Schloss, and Ron Montoya ("Petitioners"), being registered electors of the State of Colorado, respectfully submit the following Motion for Rehearing, pursuant to C.R.S. § 1-40-107(1), concerning the actions of the Title Board at the hearing on June 6, 2007, regarding Proposed Initiative for 2007-2008 # 31 ("Prohibition on Discrimination and Preferential Treatment by Colorado Governments"). Petitioners respectfully submit that the proposed initiative violates the single subject requirement of Colo. Const. art. V, §1(5.5) and §1-40-106.5, C.R.S. (2006), and that the Board does not, therefore, have jurisdiction to set a title. Petitioners also respectfully submit that the title, ballot title and submission clause established by the Title Board are unfair and do not fairly express the true meaning and intent of the proposed constitutional amendment as required by §1-40-106, C.R.S. (2006). In support of this Motion, the Petitioners submit the following specific objections.

Violation of Single Subject Requirement

1. The initiative expressly addresses two separate subjects by purporting to prohibit "discrimination" and to prohibit "preferential treatment."

a. While some forms of "preferential treatment" may be viewed as a sub-class of "discrimination" by some voters, there are many forms of governmental action that may be classified as "preferential treatment" but are in no way "discriminatory." Discrimination has been defined as "the effect of a law or established practice that



confers privileges on a certain class or that denies privileges to a certain class because of race, age, sex, nationality, religion, or handicap." Black's Law Dictionary 500 (8th ed. 2004). There are many forms of "preferential treatment" that neither confer nor deny privileges (as that term is commonly understood) to any class – *e.g.*, diversity recruitment programs, gender-specific health care programs, provision of official notices in a language other than English. Prohibiting "preferential treatment" of this nature is a distinct and separate subject from prohibiting discrimination. The proponents have repeatedly declined to define what they mean by "preferential treatment," thus creating a surreptitious measure that will have the effect of surprising and misleading the voters.

b. "Preferential treatment" – in either an arguably discriminatory or nondiscriminatory form – is generally applied as a remedy for past or existing discrimination. It is not uncommon for a voter to oppose discrimination, yet favor certain forms of "preferential treatment" as a remedy for discrimination. This measure is designed to enlist the support of voters who would favor one measure – prohibiting discrimination – in support of another measure – to prohibit "preferential treatment" – which would be less likely to pass on its own merits (*i.e.*, quintessential "logrolling").

2. The initiative purports to prohibit both discrimination and preferential treatment in three distinct areas – public employment, public contracting, and public education.

a. Considerations in the area of public education are very distinct from those in the areas of employment and contracting. Prohibiting "preferential treatment" may well not only affect issues of access or admission, but may involve curricular choices, extra-curricular activities, public support for racially or ethnically or gender imbalanced schools or institutions, etc.

b. The initiative contains an exception for "bona fide qualifications based on sex." This is a form of legalized discrimination that has, to date, only found recognition in the context of employment, *i.e.*, "bona fide occupational qualifications." See, *e.g.*, UAW v. Johnson Controls, Inc., 499 U.S. 187 (1991). The effect of the initiative would be to extend a form of discrimination heretofore sanctioned in one area into two new areas. This surreptitious effect would be a surprise and unfair to the voters.

3. The initiative contains a provision legalizing a form of discrimination – "bona fide qualifications based on sex" – beyond the context in which that concept has heretofore been recognized ("bona fide occupational qualifications") and thereby creating and sanctioning a new form of discrimination within a measure that purports to prohibit discrimination. These are incongruous effects, surreptitious in nature, that will indisputably surprise and mislead the voters.

Title is Unfair and Misleading

1. The title contains a catch phrase – "preferential treatment" – that may not be used even if the term is used in the measure itself. This is a politically "loaded" phrase suggestive of disadvantaging a non-"preferred" person or group while the effect of the measure will be far broader, and one designed to "tip the substantive debate" surrounding the issue to be submitted to the electorate. *See, e.g.*, In re Proposed Initiative for 1999-2000 #258(A), 4 P.3d 1094 (Colo. 2000).

2. The initial phrase of the title suggests that this is primarily or exclusively a measure "concerning a prohibition against discrimination by the state, and, in connection therewith," containing a variety of implementing provisions. The key, and separate and distinct,

prohibition on "preferential treatment" is wholly omitted from this introductory language. This is unfair and misleading to the voters.

3. The introductory phrase to the title suggests that the measure involves a prohibition on discrimination "by the state" – and it is not until later that one learns that this includes agencies or departments of the state, public institutions of higher education, political subdivisions, and governmental instrumentalities of or within the state. This is unfair and misleading to the voters.

4. The introductory phrase to the title omits reference to the fact that the initiative is applicable to the three distinct areas of public employment, public contracting, and public education. This is unfair and misleading to the voters.

5. The introductory phrase to the title omits reference to the fact that the initiative is applicable only to discrimination and "preferential treatment" based upon race, sex, color, ethnicity, and national origin. This is unfair and misleading to the voters.

6. The title does not disclose that a significant effect of the initiative will be to *create and sanction* a wholly new form of discrimination – in the context of an initiative facially represented by the title as designed to *prohibit* discrimination – through the recognition of "bona fide qualifications based on sex." This is misleading (both in itself and as failing to disclose this surreptitious second subject) and manifestly fraudulent upon the voters. If an initiative adopts a new legal standard, particularly one that is likely to be controversial, the voters are entitled to be clearly apprised of this fact in the title. *See, e.g.*, In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238 (Colo. 1990).

Respectfully submitted this 13th day of June, 2007.

ISAACSON ROSENBAUM P.C.

By: _____

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633 17th Street, Suite 2200
Denver, CO 80202
Telephone: 303-292-5656

Ballot Title Setting Board

Proposed Initiative 2007-2008 #31[1]

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

An amendment to the Colorado constitution concerning a prohibition against discrimination by the state, and, in connection therewith, prohibiting the state from discriminating against or granting 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; allowing exceptions to the prohibition when bona fide qualifications based on sex are reasonably necessary or when action is necessary to establish or maintain eligibility for federal funds; preserving the validity of court orders or consent decrees in effect at the time the measure becomes effective; defining "state" to include the state of Colorado, agencies or departments of the state, public institutions of higher education, political subdivisions, or governmental instrumentalities of or within the state; and making portions of the measure found invalid severable from the remainder of the measure.

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 concerning a prohibition against discrimination by the state, and, in connection therewith, prohibiting the state from discriminating against or granting 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; allowing exceptions to the prohibition when bona fide qualifications based on sex are reasonably necessary or when action is necessary to establish or maintain eligibility for federal funds; preserving the validity of court orders or consent decrees in effect at the time the measure becomes effective; defining "state" to include the state of Colorado, agencies or departments of the state, public institutions of higher education, political subdivisions, or governmental instrumentalities of or within the state; and making portions of the measure found invalid severable from the remainder of the measure?

Hearing June 6, 2007:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 3:40 p.m.

Hearing June 20, 2007:
Motion for Rehearing denied.
Hearing adjourned 4:09 p.m.

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[1] Unofficially captioned **"Prohibition on Discrimination and Preferential Treatment by Colorado Governments"** by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

EXHIBIT
C

Ballot Title Setting Board

Proposed Initiative 2007-2008 #82[1]

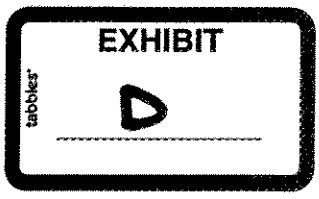
The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning a prohibition against discrimination by the state, and, in connection therewith, prohibiting the state from discriminating against or granting preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, education, and contracting; defining preferential treatment to mean adopting quotas or awarding points solely on the basis of race, sex, color, ethnicity, or national origin; preserving the state's authority to take action to establish or maintain eligibility for a federal program; protecting the validity of a court-ordered remedy or consent decree in a civil rights action; and defining "state" to include, without limitation, the state of Colorado, any agency or department of the state, any public institution of higher education, any political subdivision, or any governmental instrumentality of or within the state.

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 concerning a prohibition against discrimination by the state, and, in connection therewith, prohibiting the state from discriminating against or granting preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, education, and contracting; defining preferential treatment to mean adopting quotas or awarding points solely on the basis of race, sex, color, ethnicity, or national origin; preserving the state's authority to take action to establish or maintain eligibility for a federal program; protecting the validity of a court-ordered remedy or consent decree in a civil rights action; and defining "state" to include, without limitation, the state of Colorado, any agency or department of the state, any public institution of higher education, any political subdivision, or any governmental instrumentality of or within the state?

Hearing April 16, 2008:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 3:07 p.m.



[1] Unofficially captioned **"Discrimination/Preferential Treatment by Colorado Governments"** by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

EXHIBIT E
PROPOSED TITLE

An amendment to the Colorado Constitution to constitutionalize and clarify existing laws prohibiting certain forms of discrimination and preferential treatment while preserving the authority of the State to implement programs designed to remedy past discrimination; and, in connection therewith, prohibiting the State from engaging in discrimination or adopting quotas or awarding points on the basis of race, sex, color, ethnicity or national origin in the operation of public employment, education and contracting; preserving the authority of the State to engage in all activity otherwise prohibited by the proposed amendment when such action is taken to establish eligibility for any federal program; preserving the authority of the State to agree to voluntarily engage in all activity otherwise prohibited by the proposed amendment as part of future court ordered consent decrees; and defining "State" to include, without limitation, the state of Colorado, any agency or department of the State, any public institution of higher education, any political subdivision, or any governmental instrumentality of or within the State.

PROPOSED BALLOT TITLE AND SUBMISSION CLAUSE

Shall there be an amendment to the Colorado Constitution to constitutionalize and clarify existing laws prohibiting certain forms of discrimination and preferential treatment while preserving the authority of the State to implement programs designed to remedy past discrimination; and, in connection therewith, prohibiting the State from engaging in discrimination or adopting quotas or awarding points on the basis of race, sex, color, ethnicity or national origin in the operation of public employment, education and contracting; preserving the authority of the State to engage in all activity otherwise prohibited by the proposed amendment when such action is taken to establish eligibility for any federal program; preserving the

authority of the State to agree to voluntarily engage in all activity otherwise prohibited by the proposed amendment as part of future court ordered consent decrees; and defining "State" to include, without limitation, the state of Colorado, any agency or department of the State, any public institution of higher education, any political subdivision, or any governmental instrumentality of or within the State?

Final #31

Be it Enacted by the People of the State of Colorado:

Article II of the constitution of the state of Colorado is amended by the addition of the following section:

SECTION 31: NONDISCRIMINATION BY THE STATE

(1) 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.

(2) THIS SECTION SHALL APPLY ONLY TO ACTION TAKEN AFTER THE SECTION'S EFFECTIVE DATE.

(3) NOTHING IN THIS SECTION SHALL BE INTERPRETED AS PROHIBITING BONA FIDE QUALIFICATIONS BASED ON SEX THAT ARE REASONABLY NECESSARY TO THE NORMAL OPERATION OF PUBLIC EMPLOYMENT, PUBLIC EDUCATION, OR PUBLIC CONTRACTING.

(4) NOTHING IN THIS SECTION SHALL BE INTERPRETED AS INVALIDATING ANY COURT ORDER OR CONSENT DECREE THAT IS IN FORCE AS OF THE EFFECTIVE DATE OF THIS SECTION.

(5) NOTHING IN THIS SECTION SHALL BE INTERPRETED AS PROHIBITING ACTION 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.

(6) FOR THE PURPOSES OF THIS SECTION, "STATE" SHALL INCLUDE, BUT NOT NECESSARILY BE LIMITED TO, THE STATE OF COLORADO, ANY AGENCY OR DEPARTMENT OF THE STATE, ANY PUBLIC INSTITUTION OF HIGHER EDUCATION, ANY POLITICAL SUBDIVISION, OR ANY GOVERNMENTAL INSTRUMENTALITY OF OR WITHIN THE STATE.

(7) THE REMEDIES AVAILABLE FOR VIOLATIONS OF THIS SECTION SHALL BE THE SAME, REGARDLESS OF THE INJURED PARTY'S RACE, SEX, COLOR, ETHNICITY, OR NATIONAL ORIGIN, AS ARE OTHERWISE AVAILABLE FOR VIOLATIONS OF THEN-EXISTING COLORADO ANTI-DISCRIMINATION LAW.

(8) THIS SECTION SHALL BE SELF-EXECUTING. IF ANY PART OF THIS SECTION IS FOUND TO BE IN CONFLICT WITH FEDERAL LAW OR THE UNITED STATES CONSTITUTION, THE SECTION SHALL BE IMPLEMENTED TO THE MAXIMUM EXTENT THAT FEDERAL LAW AND THE UNITED STATES CONSTITUTION PERMIT. ANY PROVISION HELD INVALID SHALL BE SEVERABLE FROM THE REMAINING PORTIONS OF THIS SECTION.

Proponents:

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